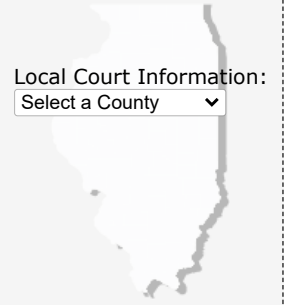




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## Annual Report to the General Assembly on 2004 Judicial Conference

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The annual meeting of the Illinois Judicial Conference was held October 21, 2004, in Chicago. The Conference, which is authorized by Article 6, section 17 of the Illinois Constitution, is charged to consider the work of the courts and to suggest improvements in the administration of justice. Judicial Conference membership, which totals 82 judges, includes the seven Justices of the Supreme Court of Illinois, as well as judicial officers from each of Illinois' five judicial districts.

The work of the Conference is ongoing, conducted throughout the year, largely through the efforts of seven separately 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 various committee rosters include appellate, circuit and associate judges who serve as full Judicial Conference members. The committees are assisted in their work by non-Judicial Conference judges, attorneys, and law professors, who are appointed by the Supreme Court to serve as either associate members or advisors. The Director of the Administrative Office of the Illinois Courts serves as the secretary to the Conference.

The Executive Committee, which is authorized by Supreme Court Rule 41, acts on behalf of the Conference when it is not in session. This Committee is comprised of fourteen judges, six from the First Judicial District (County of Cook) and eight from the remaining four judicial districts, and is chaired by the Chief Justice. 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 2004 Annual Meeting was consolidated into a one-day format. In order to manage costs with a reduced budget and minimize judicial time away from the bench, the Annual Meeting began with opening remarks by the Chief Justice of the Supreme Court of Illinois, the Honorable Mary Ann G. McMorrow. Presiding over the Conference for the third time in her capacity as Chief Justice, Justice McMorrow welcomed the attendees, recognized the presence of current members of the Supreme Court in attendance, as well as retired Supreme Court Justices Benjamin K. Miller, John L. Nickels, and Seymour F. Simon. Chief Justice McMorrow praised the work of the Conference members and committees for their public service and dedication to improving the administration of justice in Illinois.

In sum, Chief Justice McMorrow offered that the future of the State's judiciary is strong and bright. Her remarks reflected on the past year of progress and achievements which have collectively contributed to improvements in the administration of justice. She noted that the overall accomplishments of the judicial branch, and the substantive policy and practice areas that they represent, bring the value of judicial independence to life and serve as a basis for independence through increased public trust.

Chief Justice McMorrow offered observations on a range of judicial activities that have demonstrated leadership during the Conference year. She offered in particular that over 900 judicial training slots were filled by judges attending one or more Judicial Education programs or seminars. The administration of justice in Illinois continues to be improved in its efficiencies and effectiveness through the implementation of specialty courts, whether they be for drug abuse, mental health, or the integration of family and child protection procedures. Technology in Illinois' courts continues to expand with pilot programs on E-filing and electronic document imaging. Finally, the role of the judiciary in working with our State's most vulnerable citizens, those children who are the subject of abuse and neglect, increased during the year. In that regard, Chief Justice McMorrow noted the Supreme Court's administration of the Court Improvement Program and the work of its Judicial Advisory Committee, resulting in new programs to assist local and state efforts in improving the judicial system's work with victims of abuse and neglect.

Finally, the Chief Justice noted that as the "Third Branch" of government, the judiciary is equal not only in authority, but also in the responsibility to work collaboratively with the other branches of government to contribute to the fiscal well-being of the State of Illinois. She admonished, however, that while the judicial branch must share in the budget "belt-tightening," the Court cannot compromise its high standards in the efficient administration of the judiciary or in the delivery of justice. To do so would compromise judicial independence, which is the very foundation of our system of justice.

The Annual Meeting continued with time dedicated to Conference committee meetings which were devoted in part, to finalization of the committees' annual reports and to preliminary planning for Conference year 2005 initiatives. The afternoon plenary session included a presentation of each of the committees' annual reports and recommendations to the full Conference. The following summarizes the written and oral presentations of those reports:

### Automation and Technology Committee

During the 2004 Conference year, the Committee continued to pursue security and technology issues on behalf of the judiciary. The Committee's recommendation to amend Supreme Court Rule 63A(7) to include new technology devices in the definitions of precluded broadcasting and televising was approved by the Court and became effective December 5, 2003. The Committee drafted, distributed, and analyzed the results of a survey of computer usage by judges. Additionally, the Committee continued to follow the electronic filing and optical imagery projects being conducted by the Supreme Court, reviewed the concept of electronic guilty pleas and secure discussion "chat" rooms for judges, discussed new technologies becoming available, especially in the area of Spyware and computer viruses and worms that may affect the judiciary, and considered the collection of information about trial court information systems in Illinois and how they have been funded.

During the 2005 Conference Year, the Committee, with the approval of the Conference and Court, will continue its efforts to review the results of the survey of computer usage by judges, continue to evaluate existing and emerging technology issues,

security issues which have been presented by Spyware, viruses and worms, continue to review the findings associated with the electronic filing and imaging pilots in Illinois, and analyze information about trial court information systems and funding.

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

During the 2004 Conference Year, the Committee monitored both Court-Annexed Mandatory Arbitration Programs and Court-Sponsored Major Civil Case Mediation Programs.

##### **Court Annexed-Mandatory Arbitration**

The Committee met with arbitration administrators and supervising judges of circuits with mandatory arbitration programs. Topics included the amendment of Supreme Court rules and several programmatic issues raised by arbitration administrators and supervising judges.

During Conference year 2004, the Committee forwarded to the Supreme Court Rules Committee, proposed amendments to Supreme Court Rule 90 - Conduct of the Hearings, and Supreme Court Rule 222 - Limited and Simplified Discovery in Certain Cases. The proposed amendment to Supreme Court Rule 90 would add a paragraph to prohibit certain communications of an arbitrator during the pendency of a case, and until a final order is entered and the time for appeal has expired. The proposed amendment to Rule 222 would require practitioners to follow the dictates of local rules as they pertain to the extension of time for disclosure.

##### **Court Sponsored Major Civil Case Mediation Programs**

The Committee monitored existing Court-approved mediation programs, observed the inception of five new mediation programs and continued to track statistical information to determine program efficacy.

The Committee plans to continue to monitor Court-annexed mandatory arbitration programs; oversee and facilitate the improvement of Court-approved mediation programs; continue to study, draft and propose rule amendments in light of suggestions from program practitioners; and study and evaluate other alternative dispute resolution options such as summary jury trials.

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

During the past Conference year, the Committee updated the *Illinois Manual for Complex Civil Litigation* with a sixteen-page cumulative list of manual pages affected by recent developments.

The civil manual was first published in 1991; the Committee produced comprehensive revisions in 1994 and 1997. Over 200 judges have received copies of the manual, and it has been used as the basic text for a judicial seminar on complex litigation. The manual covers many issues that can arise in a complicated civil case, from initial case management through discovery, settlement, trial, and appeal. Chapters address special and recurring problems of complex cases, including class action proceedings, parallel actions in federal court and the courts of other states, and mass tort litigation. The manual seeks to provide practical advice for handling cases that risk becoming protracted and consuming disproportionate amounts of judicial resources.

This year, the Committee updated the *Illinois Manual for Complex Criminal Litigation* with a twenty-page cumulative list of manual pages affected by recent developments. The first edition of the criminal manual was published in 1997. Its thirteen original chapters cover topics such as identifying complex criminal litigation, handling complex grand jury proceedings, and managing the pretrial, trial, and sentencing phases of complex criminal cases.

During the next Conference year, the Committee plans to monitor and evaluate caselaw, rule changes, and legislation, and to draft updates and supplements to keep the *Illinois Manual for Complex Civil Litigation* and the *Illinois Manual for Complex Criminal Litigation* current. The Committee further expects to continue work on recommended treatment of overlapping complex civil cases. Finally, the Committee will continue to explore how the manuals can be revised and disseminated to best serve Illinois judges.

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

In the 2004 Conference Year, the Committee continued its review of probation practices and procedures and its study of youthful offender sentencing programs. The Committee is filing a report and a draft statutory proposal on youthful offender sentencing, and is also filing reports on mental health issues in criminal cases and on the use of global positioning systems in the criminal justice system. Ongoing studies included review of probation programs for domestic violence cases and sex offender cases.

The Committee reviewed a proposal from the Supreme Court Rules Committee in August 2003 to amend Supreme Court Rule 604 with respect to appeals by prosecutors in municipal prosecutions. In May 2004, the Committee approved the proposal and returned it, with comments, to the Rules Committee. The Committee also resubmitted, for approval, a proposal to the Committee on Jury Instructions in Criminal Cases to amend the Illinois Pattern Jury Instructions to include a cautionary instruction on informants. The proposal was not approved.

In the next conference year the Committee plans to continue its review of probation practices and procedures and other issues of concern in criminal cases. The Committee will continue to study specialized probation programs for probationers who committed gang or drug related offenses, and programs to address sex offenders and probationers who suffer from mental health problems. Finally, the Committee will study and make recommendations regarding the Supreme Court Rules governing criminal cases.

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

During the Conference year, the Committee considered proposed amendments to Supreme Court Rules 204, 206, 222, and 237. The Committee also considered the creation of a uniform court order for disclosing medical records under the Health Insurance Portability and Accountability Act ("HIPAA"). As a final matter, the Committee addressed whether to eliminate the distinction between discovery and evidence depositions.

The Committee on Discovery Procedures conveyed to the Rules Committee its questions/concerns regarding the definitions of "fee" and "independent expert" and the potential increase in the cost of litigation by charging a fee for testimony. The Rules Committee discontinued further discussion of the proposed amendment.

The Committee reconsidered its prior proposal to amend Supreme Court Rule 206(c) to eliminate objections, except as to privilege, in discovery depositions, and to require that objections in evidence depositions be concise and state the exact legal

basis for the objection. The Committee again decided to table this proposed amendment for future discussion given that the mechanism is in place to terminate a deposition and proceed to court where objections become too numerous or where a deposing attorney's questions become abusive.

The Committee considered the Alternative Dispute Resolution Coordinating Committee's proposal to amend Supreme Court Rule 222(c), which requires practitioners to follow the dictates of timeliness set by local rule in making initial disclosures under Rule 222. The Committee forwarded its recommendation to adopt the proposed amendment to the Supreme Court Rules Committee.

The Supreme Court Rules Committee's proposal to amend Supreme Court Rule 237 would add a paragraph requiring the appearance of certain individuals and the production of certain documents at expedited hearings. The Committee on Discovery Procedures expressed concerns about compelling an officer, director or employee of a party to appear for an expedited hearing with very little notice and about allowing expedited hearings beyond the context of domestic relations cases. The Committee forwarded its concerns to the Rules Committee. Consistent with the Committee's concerns, the Rules Committee modified the proposal. The Committee therefore recommended adoption of the modified proposal to amend Rule 237.

The Committee tabled discussion on the creation of a uniform court order for purposes of disclosing medical records under "HIPAA" and on the elimination of the distinction between discovery and evidence depositions.

In the next Conference year, the Committee will review any proposals submitted by the Supreme Court Rules Committee.

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

During the Conference year, the Committee continued updating Volume I of the two-volume set of the *Illinois Juvenile Law Benchbook*. Both volumes of the Benchbook are now available for distribution.

The Committee began to identify and compile information regarding statewide juvenile justice initiatives, balanced and restorative justice proposals, and offender reentry programs. The Committee intends to evaluate whether these compilations should be included in the Juvenile Law Benchbook or disseminated as part of the Committee's education activities. Additionally, the Committee contributed to and served on the faculty of various education programs.

In the next Conference year, the Committee intends to draft updates for Volume I and Volume II of the *Illinois Juvenile Law Benchbook*. The Committee also expects to participate in the presentation of juvenile law education programs. The Committee plans to monitor proposed and enacted legislation that may affect the juvenile justice system.

#### **Committee on Education**

In Spring 2004, the Committee oversaw the presentation of Education Conference 2004. More than 900 Illinois judges attended the February and March 2004 presentations, either as participants or as presenters. The Education Conference featured 15 distinct presentations on areas of substantive law as well as three half-day sessions on civil and criminal jury management, child development issues for judges handling cases involving children and a session on how the brain receives, stores and retrieves information and how those processes affect eyewitness perception and recollection. As required by the Court's Comprehensive Education Plan for Illinois Judges, all attendees participated in opening plenary sessions on judicial conduct issues as well as one of the two concurrent sessions on judicial conduct, entitled "When is 'Doing the Right Thing' Going Too Far?" and "Real World Ethics: Life Outside the Courtroom." Nearly 300 judges attended the optional morning session entitled "The Philosophy, the Process and the Pitfalls of Retirement."

In addition to the Education Conference, the Committee conducted a full schedule of seminars during the 2003-2004 Judicial Conference year, presented a New Judge Seminar and conducted a Faculty Development Workshop for judges serving as faculty for Judicial Conference programs. The seminar series included five regional (2-day) seminars and three mini (1-day) seminars. Faculty for all programs were assisted by staff of the Administrative Office of the Illinois Courts.

The Resource Lending Library, sponsored by the Committee and managed by the Administrative Office, continued to serve as a valued judicial education resource. Loan material available through the library includes videotapes, audiotapes and publications. Permanent use items include seminar reading materials, bench books, manuals, and other materials. The total number of loan and permanent use items distributed to judges in Fiscal Year 2004 was 848, with 346 judges requesting one or more items from the library. As in the past, seminar reading materials and informational videotapes were the most requested items.

During the upcoming Conference year, the Committee will plan and present the 2004-2005 seminar series, including regional and mini seminars, a Faculty Development Workshop, a New Judge Seminar, and the 2005 Advanced Judicial Academy. In addition to conducting the 2004-2005 programs, the Committee will, with Court approval, plan a full schedule of seminars for the 2005-2006 seminar year, apply to the Illinois Department of Transportation for funding to conduct the annual seminar on issues related to driving under the influence, and issue an updated Resource Lending Library Catalog.

#### **Supreme Court Decisions Which the General Assembly May Wish to Consider**

##### **Adoption Act – Fitness of a Parent**

In *In re D.F.*, S. Ct. Doc. 94479 (December 18, 2003), this court held that the nine-month evaluation period in amended section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2000)), effective January 1, 2000, applies to both the reasonable-efforts ground and the reasonable-progress ground, and that the date on which to begin assessing a parent's efforts or progress is the date the trial court enters its order adjudging the minor neglected, abused, or dependent, rather than the date the trial court enters its dispositional order. In so holding, the court acknowledged that a literal reading of section 1(D)(m) supports a position that the nine-month evaluation period applies to only a parent's reasonable progress and not a parent's reasonable efforts. Nevertheless, the court determined that a literal reading yields a result inconsistent with the remainder of the legislative scheme which seeks to expedite juvenile court proceedings.

##### **Continued Rejection of Filial Society Claim**

In *Vitro v. Mihelcic*, S. Ct. Doc. 94231 (January 23, 2004), our court considered whether a parent may recover for loss of society and companionship of a non-fatally injured child. The court adhered to its decision in *Dralle v. Ruder*, 124 Ill. 2d 61 (1988) and declined to enlarge the scope of liability to encompass claims for loss of filial society resulting from nonfatal injuries to a child. The court determined that the legislature is the more appropriate body to address such liability and any subsequent change in the law.

##### **Appearances Via Closed Circuit Television in Criminal Cases**

In *People v. Stroud*, S. Ct. Doc. 94823 (January 23, 2004), this court, finding the courtroom itself is an important element in the constitutional conception of a trial, held that a defendant's appearance at a guilty plea proceeding via closed circuit television is

permissible only if the defendant, after being advised of his right to be physically present, makes a waiver of that right. The court found the Illinois statute, unlike the statutes of many other states and the federal rules, is not clear about the kinds of proceedings that may be conducted by closed circuit television or whether a defendant's consent to the procedure would be required.

#### **Section 5-2-4 of the Unified Code of Corrections is Ambiguous**

In *Williams v. Staples*, S. Ct. Doc. 95873 (January 23, 2004), our court considered which portion of section 5-2-4 of the Unified Code of Corrections (730 ILCS 5/5-2-4 ) (West 2000) controls when a not guilty by reason of insanity (NGRI) defendant's conditional release period exceeds his release date (*Thiem date*). Concluding that section 5-2-4 is ambiguous, the court looked to the statute's legislative history. The court determined that the legislature did not intend for the conditional release period to be used to allow a court to exercise jurisdiction over a NGRI defendant beyond the expiration of the defendant's *Thiem date*. The legislative history demonstrated that the conditional release provision was not directed at NGRI defendants who were involuntarily committed following their acquittal, but rather was designed to cover those NGRI defendants who were released because they did not need mental treatment or did not meet the standard for involuntary admission. The court concluded that the conditional release provision does not extend the trial court's jurisdiction over an NGRI defendant beyond his *Thiem date*.

#### **Section 11-54-1 of the Illinois Municipal Code is Ambiguous**

In *Quad Cities Open, Inc. v. City of Silvis*, S. Ct. Doc. 95972 (January 23, 2004), this court considered the meaning of the phrase "for gain" contained in section 11-54-1 of the Illinois Municipal Code (65 ILCS 5/11-54-1 (West 2002)). Concluding that the phrase is ambiguous, the court assumed that the legislature did not intend absurdity to result from the legislation. Accordingly, the court held the phrase "for gain" does not include events organized and operated for charitable purposes. To conclude otherwise would have required the court to ignore the legislature's pattern of preferential treatment for charitable organizations.

#### **Public Act 89-688 Violates the Single Subject Rule of the Illinois Constitution**

In *People v. Burdunice*, S. Ct. Doc. 96563 (May 20, 2004), the court held that Public Act 89-688, which amended the Criminal Code by adding cellular telephone batteries to the definition of "electronic contraband" which persons cannot bring into a penal institution, violated the single subject rule of the Illinois Constitution. The court found the Act encompassed two subjects – matters relating to criminal law as well as matters relating to civil law. Specifically, the court found Section 0.5 of the Act, which amended the State Employee Indemnification Act to allow the Illinois Attorney General to file counterclaims in civil suits filed against state employees, addressed civil matters while the remainder of the Act addressed criminal matters.

#### **Sexually Dangerous Persons Act – Post-conviction Relief**

In *People v. Lawton*, S. Ct. Doc. 95802 (October 7, 2004), this court held that section 2-1401 of the Code of Civil Procedure can be used to raise an ineffective assistance of counsel claim under the Sexually Dangerous Persons Act (725 ILCS 205/0.01 *et seq.* (West 2002)). The court found that applying section 2-1401 to allow the defendant a civil remedy gave effect to the constitutional right of effective assistance of counsel and did not violate public policy. A partial dissent contended that until the General Assembly acts and crafts an appropriate collateral proceeding under which defendants can assert constitutional claims, relief under section 2-1401 should not be allowed.

#### **Public Nuisance - Firearms**

In *City of Chicago v. Beretta U.S.A., Corp.*, S. Ct. Doc. 95243, 95253, 95256, 95280 cons. (November 18, 2004), this court considered a complaint filed by the City of Chicago and the County of Cook against several firearm manufacturers, distributors and dealers, alleging that defendants unreasonably facilitated the unlawful possession and use of firearms in the City, and that defendants were liable for participating in the creation and maintenance of a public nuisance. Our court held that plaintiffs did not state a cause of action for public nuisance against defendants because plaintiffs did not sufficiently plead facts alleging a public right, a transgression of those rights, and resulting damages. In so holding, the court noted that, when considering the element of a substantial and unreasonable interference with a public right, it would defer to the legislature the matter of whether the lawful production and sale of a nonproductive product is reasonable.

#### **Public Nuisance - Firearms**

In *Young v. Bryco Arms*, S. Ct. Doc. 93678, 93685, 93728 cons. (November 18, 2004), the court held that plaintiffs had not stated a cause of action for public nuisance against defendant gun manufacturers and distributors for creating a public nuisance in the City of Chicago by designing, manufacturing, marketing, and selling guns that are intended to appeal to criminals and juvenile gang members. Guided by our decision in *City of Chicago v. Beretta U.S.A., Corp.*, Nos. 95243, 95253, 95280, 95286 cons. (November 18, 2004), the court held, as a matter of law, that plaintiffs could not state a public nuisance claim as the allegations were not supported by any recognized duty. The court concluded the claim made by plaintiffs is a public policy determination best addressed by the legislature.