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## Annual Report to the General Assembly on 2003 Judicial Conference

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The 50th annual meeting of the Illinois Judicial Conference was held October 23-24, 2003, 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. Conference membership 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 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.

Day one of the 2003 Annual Meeting commenced with a Conference luncheon in which members of the Conference were joined by associate members and advisors. The Honorable Mary Ann G. McMorro, presiding over the conference for the second time in her capacity as Chief Justice, welcomed the attendees and also recognized the presence of current members of the Supreme Court as well as retired Supreme Court Justices Benjamin K. Miller, John L. Nickels, and Seymour Simon. Chief Justice McMorro also 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 McMorro reflected on the profound changes that our society was experiencing in the post September 11th attacks. She suggested that although the changes that confront Illinois judges create challenges, they need not immobilize the judiciary. Judges must remain open to change because, often, it is the element of change which bears the fruit of opportunity and growth. As the "Third Branch" of government, the judiciary not only embrace change, but serve as catalysts for change.

Chief Justice McMorro offered observations on a range of judicial activities that have demonstrated leadership during the conference year: over 800 judicial training slots were filled by judges attending one or more Judicial Education programs or seminars; the Supreme Court's Committee on Professionalism continues to work to raise the collective consciousness of the bench and bar to promote respectful conduct; technology in Illinois' courts continues to expand with a pilot program on E-filing about to commence; and the increased role of the judiciary in the work with our State's most vulnerable citizens, those children who are the subject 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. However, while sharing 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.

Day one included a half-day dedicated to Conference committee meetings which were devoted in part to finalization of their annual reports and to preliminary planning for Conference year 2004 initiatives. An evening reception concluded the first day activities for the 2003 Judicial Conference.

On day two of the Annual meeting, Chief Justice McMorro convened the members for the plenary session. At that time, each of the committees presented their 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 2003 Conference year, the Committee continued to pursue security and technology issues on behalf of the judiciary. The Committee drafted a rule amendment to Supreme Court Rule 63A(7) to include new technology devices in the definitions of broadcasting and televising. Many of the handheld personal data assistants (PDA's) have the capability to record and transmit from any location, and hence the proposed rule amendment would preclude such items from being activated in Illinois' courtrooms without authorization of the Supreme Court. The recommendation was forwarded to the Rules Committee in October 2003.

The Committee made a request to the Director of the Administrative Office that documents submitted for inclusion on the Supreme Court's Web Site be formatted in or accompanied with a document in HTML format. HTML is a native Internet text format which stands for Hypertext Markup Language. The Director forwarded the request to the Judicial Management Information Services (JMIS) Division of the AOIC for review and recommendation. JMIS is responsible for managing the web site. It was determined that limiting electronic submissions to a single format would eliminate the flexibility now enjoyed by the

Administrative Office in controlling for the overall appearance and functionality of the Court's web site. Further, to make electronic submission a requirement of posting could hinder the submission of useful data to be posted to the web site.

Finally, the Committee continued to follow the electronic filing and optical imagery projects being conducted by the Administrative Office, worked on a survey of technology advancements for the judiciary that it hopes to distribute and analyze during the next calendar year, and discussed new technologies becoming available that may affect the judiciary, such as wireless technology and a judicial branch Intranet.

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

During the 2003 Conference Year, the Committee monitored both Court-Annexed Mandatory Arbitration Programs and Court-Sponsored Major Civil Case Mediation Programs.

In addition, the Committee met with arbitration administrators and supervising judges of circuits with mandatory arbitration programs. Topics discussed at the meeting included Supreme Court Rule amendment proposals; good faith participation in arbitration hearings; and several programmatic issues raised by the arbitration administrators and supervising judges.

As a part of this year's activities, the Committee forwarded to the Supreme Court Rules Committee language to amend Supreme Court Rule 94. The amended language proposed to establish check boxes on the Award of Arbitrators form which arbitrators would identify if the litigants in the arbitration process participated in good faith. The proposal was intended to address concerns about certain litigants rejecting awards as a matter of course and not participating throughout the arbitration process in good faith. The Supreme Court approved the amendments with an effective date of December 1, 2003.

The Committee also explored the feasibility of implementing a summary jury trial process in the state of Illinois. Summary jury trials are a specialized process designed to address high-end cases that are more complex and consume disproportionate amounts of court time and resources. The concept of summary jury trials was introduced to the Committee as a topic of discussion to study throughout the remainder of this Conference year and next.

During Conference Year 2004, the Committee plans to explore options for the implementation of summary jury trials as a part of alternative dispute resolution practices. Some of the options may include Supreme Court Rule proposals, enabling legislation or local rule implementation. The Committee will continue to identify and examine other jurisdictions that successfully utilize the summary jury trial process and determine which practices might best accommodate a program in the state of Illinois.

In the area of mediation, the Committee continued to monitor existing Court-sponsored mediation programs and track statistical information to determine program efficacy.

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

During the past Conference year, the Committee met to discuss caselaw developments, new legislation, and rule changes in order to keep the *Illinois Manual for Complex Civil Litigation* and the *Illinois Manual for Complex Criminal Litigation* current. The Committee determined that update and supplemental chapters were necessary for both the civil and criminal manuals. The Committee produced a fourteen-page cumulative update for the civil manual and a supplemental chapter on discovery of business records, joint and several liability, and class action issues. The Committee produced a fifteen-page cumulative update for the criminal manual and a supplemental chapter on sentencing issues. These materials were made available for distribution in CD ROM format at the Annual Meeting of the Judicial Conference.

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

In the 2003 Conference year, the Committee continued its review of probation practices and procedures and its study of youthful offender sentencing programs. The Committee also continued to monitor the work of the Governor's Criminal Code Rewrite and Reform Commission. The Committee has prepared findings on the "Broken Windows" approach to probation, reports on specialized programs for domestic violence cases and gang issues, and a preliminary report on sex offender cases.

In 2002, the Committee proposed a new Rule 402A, which would specify the admonishments that must be given when a defendant admits or stipulates to evidence sufficient to find a violation of probation, conditional discharge or court supervision. In Conference year 2003, the Committee addressed issues raised in the public comments invited by the Supreme Court Rules Committee. The Supreme Court adopted the new Rule in October 2003, effective November 1, 2003.

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

During the Conference year, the Committee considered proposed amendments to Supreme Court Rules 237, 204, and 206. 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 approved the proposal provided that it is limited to a party, as opposed to an officer, director or employee of a party, and to domestic relations cases. The Supreme Court Rules Committee's proposal to amend Supreme Court Rule 204 would create a paragraph to address deposition fees for an independent expert witness. The Committee on Discovery forwarded inquiries regarding the definition of fee and independent expert and the rationale behind the proposed change to the Supreme Court Rules Committee for further clarification. As a final matter, 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 decided to table this proposed amendment for future discussion given that the current rules address any egregious behavior that might arise at a discovery deposition.

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

During the Conference year, the Committee commenced updating Volume I of the two-set volume of the *Illinois Juvenile Law Benchbook*. Both volumes of the Benchbook are available for distribution through the Resource Lending Library.

The Committee discussed the anticipated 2003 federal review of Illinois' child and family services system, which includes an analysis of select juvenile court functions in the management of abuse, neglect and dependency cases. During the presentation of the oral comments of the Committee at the Annual Meeting of the Judicial Conference, it was noted that Illinois' federal review was conducted in mid-September, 2003. The site work for the review did include personal interviews with select juvenile court judges from the three chosen jurisdictions. Further, while over 35 other states have undergone the federal review, none of them

have earned passing grades in the domains that are measured - safety, permanency, and well-being. Illinois' report, to be issued by the U.S. Department of Health and Human Services (HHS), has yet to be received by Illinois' child welfare officials. It is anticipated that Illinois, as has occurred with all other jurisdictions that have been reviewed, will not achieve a passing rating. When the report is received, it was noted that there have been discussions to provide for judicial branch participation in the crafting of Illinois' required program improvement plan that will be filed in response to HHS's report.

Finally, the Committee also contributed to and served on the faculty of the New Judge Seminar.

#### **Committee on Education**

In June 2003, the Committee oversaw the presentation of the second biennial Illinois Advanced Judicial Academy at the University of Illinois College of Law in Champaign. The Academy, entitled "Taking Facts Seriously," was attended by 74 experienced judges from across the state. Developed to provide an intensive five-day educational forum for Illinois judges, the 2003 Academy enabled participants to examine the underpinnings of the rules and principles of evidence and to examine the processes - both legal and cognitive - for determining facts.

In addition to the Academy, the Committee conducted a full schedule of seminars during the 2003 Judicial Conference year, and also presented a New Judge Seminar and a Faculty Development Workshop for all Illinois judges serving as faculty for Judicial Conference programs. The seminar series included nine regional (2 day) seminars and four mini (1 day) seminars.

The Committee on Education worked in collaboration with a special committee developed at the request of the Judicial Mentor Committee to produce a new videotape to train judges to serve as mentors in the New Judge Mentor Program. The videotape was circulated to all judicial circuits in fall 2002.

The Resource Lending Library, which is 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 2002 was 1063. Four hundred thirty one judges requested one or more items from the library. As in the past, seminar reading materials and informational videotapes were the most requested items.

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

##### **Amended Attempt Statute is an Unconstitutional Violation of the Proportionate Penalties Clause**

In *People v. Morgan*, S. Ct. Doc. 90891 (January 24, 2003), this court held that the sentencing ranges created by the amended attempt statute (720 ILCS 5/8-4 (West 2000)), which added the "15- 20-25 to life" sentencing provisions to the offense of attempted first degree murder, violated the proportionate penalties clause of the Illinois Constitution. The court found that persons whose actions are identical may be exposed to vastly disparate sentences depending on whether the victim lives or not, and the person who fails to kill his victim stands to be sentenced to a much greater sentence than the person who actually causes the death of his victim.

##### **Section 9-3(b) of the Reckless Homicide Statute Held Unconstitutional as Denying Due Process**

In *People v. Pomykala*, S. Ct. Doc. 93089 (January 24, 2003), our court considered whether the presumption contained in section 9-3(b) of the Criminal Code of 1961 (720 ILCS 5/9-3(b) (West 2000)) is permissive or mandatory, noting that, under Illinois law, all mandatory presumptions are considered per se unconstitutional. The court determined that section 9-3(b) contained language of a mandatory presumption that a reasonable juror could conclude requires a finding of recklessness without any factual connection between the intoxication and the reckless act, unless this presumed connection is disproved. Accordingly, the court held that section 9-3(b) created a mandatory presumption of recklessness and, consequently, violated the defendant's due process rights. However, this court also determined that section 9-3(b) may be severed from the remainder of the statute.

##### **Continued Rejection of Social Host Liability**

In *Wakulich v. Mraz*, S. Ct. Doc. 92128 (February 6, 2003), this court determined that, apart from the limited civil liability provided in the Dramshop Act, there exists no social host liability in Illinois. The court adhered to its decision in *Charles v. Seigfried*, 165 Ill. 2d 482 (1995) and declined to recognize any form of social host liability. The court noted that the legislature continues to debate social host liability and that the legislature is best positioned to determine any change in the statute. A special concurrence suggested that there should be social host liability in situations where an adult social host provides alcohol to a minor who is permitted to become intoxicated and then to drive a vehicle.

##### **Sex Offender Registration Act - Juvenile Sex Offender**

In *In re J.W.*, S. Ct. Doc. 92116 (February 21, 2003), our court held that a condition of probation that required a 12-year-old boy to register as a sex offender for the rest of his life under the Sex Offender Registration Act (730 ILCS 150/1 *et seq.* (West 2000)) and that prohibited him from residing in his community is constitutional; however, a condition of probation that prohibited a 12-year-old boy from visiting his community under any circumstances is unconstitutional. The court found that there is a rational relationship between the registration of juvenile sex offenders and the protection of the public from such offenders. The court also found that a residency restriction is a reasonable condition of probation. Nevertheless, the court determined that banishing a 12-year-old boy from entering his community for any purpose is an unconstitutionally over broad restriction on his exercise of his fundamental rights. A special concurrence invited the legislature to reconsider the wisdom of imposing lifetime registration on juveniles, particularly juveniles under the age of 13. A partial dissent contended that subjecting juvenile delinquents to a lifetime registration requirement violates principles of substantive due process because it is an unreasonable method of accomplishing the state's desired objective.

##### **Section 10(a) of the Public Employee Benefits Act is Ambiguous**

In *Krohe v. City of Bloomington*, S. Ct. Doc. 94112 (March 20, 2003), this court considered the meaning of the phrase "catastrophic injury" contained in section 10(a) of the Public Employee Benefits Act ((820 ILCS 320/10 (West 2000)). Concluding that the phrase is ambiguous, the court looked to the statute's legislative history and debate. The court determined that the history indicated the legislature's intent to define a "catastrophically injured" policeman or firefighter as one who has been forced to take a line-of-duty disability due to injuries. Accordingly, the court construed the phrase "catastrophic injury" as synonymous with an injury resulting in a line-of-duty disability under section 4-110 of the Illinois Pension Code.

##### **Section 4-103.2(b) of the Illinois Vehicle Code, as it Applies to Special Mobile Equipment, Violates Due Process**

In *People v. Greco*, S. Ct. Doc. 89940 (May 8, 2003), this court held that section 4-103.2(b) of the Illinois Vehicle Code (625 ILCS 4-103.2(b) (West 2000)) is unconstitutional as it applies to special mobile equipment. The court concluded that it violated due

process by removing the requirement that a piece of special mobile equipment be recently stolen in order for possession of the equipment to give rise to an inference that the possessor knows that the equipment was stolen.

#### **Involuntary Commitment under the Mental Health and Developmental Disabilities Code**

In *In re James E.*, S. Ct. Doc. 93608 (May 22, 2003), this court considered whether a hospital not owned and operated by the State of Illinois can initiate a petition for involuntary commitment against one of its voluntary mental health patients, who has not requested a discharge in writing, to facilitate transferring the patient to a state facility. The court determined that the Mental Health and Developmental Disabilities Code (Code) (405 ILCS 5/1-100 *et seq.* (West 2000)) fails to address a situation in which a nonstate hospital cannot continue to treat a voluntary patient already admitted to the facility but in need of continued treatment. The court therefore held that when a nonstate hospital can no longer adequately treat a voluntarily admitted patient, discharge from the nonstate hospital and the immediate initiation of an involuntary commitment proceeding to a state hospital pursuant to article VI of the Code (405 ILCS 5/3-600 *et seq.* (West 2000)) serves to ensure that a patient received necessary and adequate treatment. The court concluded that a written request for discharge was not necessary under these limited circumstances.

#### **Section 11-20.1(f)(7) of the Illinois Child Pornography Statute Declared Unconstitutional**

In *People v. Alexander*, S. Ct. Doc. 93952 (May 22, 2003), our court held that section 11-20.1(f)(7) of the Illinois child pornography statute (720 ILCS 5/11-20.1(f)(7) (West Supp. 2001)), which targeted virtual and pandered child pornography, is unconstitutional because it has the same language as a federal statute found to be unconstitutional by the United States Supreme Court in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002). The court further held, however, that this section is severable from the remainder of the statute.

#### **Auditing Act - Use of Funds in the Operation of Chicago's Airports**

In *City of Chicago v. Holland*, S. Ct. Doc. 90585 (June 19, 2003), our court determined that the audit of the City's airports, pursuant to a 1995 amendment to section 3-1 of the Illinois State Auditing Act (30 ILCS 5/3-1 (West 2000)), was improper. The court explained that, because the City's airports receive no funding from the state treasury, the audit exceeded the Auditor General's constitutional and statutory authority. The court rejected the Auditor's argument that the definition of public funds of the state should include federal grants, which the state receives for disbursements to the airports.

#### **Sentencing Enhancements Violate Proportionate Penalties Clause**

In *People v. Moss et al.*, S. Ct. Doc. 91012, 91013, 91044, 91045, 91046, 91047, 91048, 91049, 91050, 91051, 91052, 91328 (June 19, 2003), this court considered the sentencing enhancements, commonly referred to as the "15-20-25 to life" provisions, added to certain offenses by Public Act 91-404. The court noted that the less serious conduct proscribed in the Public Act offenses involving possession of a firearm (15 years added) and personal discharge of a firearm (20 years added) is punished more harshly than is the more serious conduct targeted by the statutes for aggravated battery with a firearm and aggravated discharge of a firearm. The court therefore held that the 15 and 20 year enhancements violated the proportionate penalties clause with regard to the statutes for armed robbery, aggravated kidnapping, and aggravated vehicular hijacking.

#### **Sexually Dangerous Persons Act Contains Significant Ambiguities**

In *People v. Masterson*, S. Ct. Doc. 93579 (October 2, 2003), our court held that section 1.01 of the Sexually Dangerous Persons Act (725 ILCS 205/1.01 (West 1998)) meets minimal constitutional standards. The court found that the language of the Act implies that the mental disorder which afflicts the subject of the commitment proceedings must be causally related to the person's propensity to commit sex offenses, and the requirement that the person has demonstrated that propensity by his or her actions is an important indicator of both mental abnormality or disorder and future dangerousness. By acting upon their propensities, those suffering from mental disorders demonstrate dangerousness and impaired volitional capacity, which are the touchstones for civil commitment under prior precedent. However, the court noted that the Act contains certain significant ambiguities, including failing to specifically address volitional capacity, failing to define the term "mental disorder," and failing to provide an explicit standard for gauging the probability or likelihood that the subject of the proceeding will commit sexual offenses in the future. The court resolved such ambiguities by applying the definitions and burden of proof set forth in the Sexually Violent Persons Commitment Act (725 ILCS 270/1 *et seq.* (West 2000)), which is closely related in subject and proximity to the Sexually Dangerous Persons Act.

#### **Provision of the Consumer Fraud and Deceptive Business Practices Act Constitutes Special Legislation**

In *Allen v. Woodfield Chevrolet, Inc.*, S. Ct. Doc. 94814 (October 17, 2003), this court held that amendments to section 10a of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 1996)), as contained in Public Acts 87-1140 and 89-144, constituted special legislation on behalf of car dealers and are thus unconstitutional. The court determined that the amendments clearly favor car dealers by putting them on a more advantageous footing than other retailers covered by the Act, thus creating a special class.