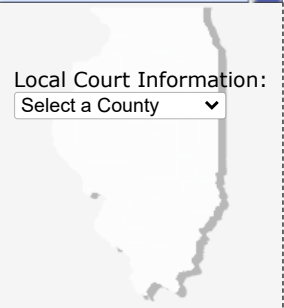




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## Annual Report to the General Assembly on 2011 Judicial Conference

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On October 13, 2011, the Illinois Judicial Conference convened its annual meeting in Chicago, Illinois. The Conference, which is authorized by Article 6, section 17 of the Illinois Constitution, is mandated to consider the work of the courts and to suggest improvements in the administration of justice. The constitutional mandate is implemented through Illinois Supreme Court Rule 41, which defines the duties and the membership of the Illinois Judicial Conference. Consistent with Rule 41, the Conference is composed of judges from every level of the judiciary representing Illinois' five judicial districts. The Justices of the Supreme Court of Illinois, including the Chief Justice, who presides over the Conference, also serve as members.

The work of the Judicial Conference is conducted throughout the year, largely by the efforts of seven appointed committees: Alternative Dispute Resolution Coordinating Committee; Automation and Technology Committee; Study Committee on Complex Litigation; Committee on Criminal Law and Probation Administration; Committee on Discovery Procedures; Committee on Education; and Study Committee on Juvenile Justice. The rosters of the various committees include appellate, circuit and associate judges who serve as full members of the Judicial Conference. Their work is aided by judges, law professors, and attorneys who are appointed by the Supreme Court to serve as either associate members or advisors to the committees but are not members of the Judicial Conference. Senior level staff of the Administrative Office of the Illinois Courts serve as liaisons to support the committees' activities.

The Executive Committee, which also is authorized through Supreme Court Rule 41, acts on behalf of the Conference when the Conference is not in session. The Executive Committee consists of fourteen judges, including six from the First Judicial District (Cook County) and the remaining eight from judicial districts two, three, four and five. The Executive Committee previews the written reports of the Conference committees and submits, for the Supreme Court's approval, an agenda for the annual meeting.

The 2011 Annual Meeting of the Judicial Conference was conducted in a one-day format to minimize judicial time away from the bench and to effectively manage costs. The meeting was convened by the Chief Justice of the Supreme Court of Illinois, the Honorable Thomas L. Kilbride. In his opening remarks, Chief Justice Kilbride welcomed the Conference members and thanked them for their hard work during the Conference year. He also recognized the presence of current members of the Supreme Court as well as retired Supreme Court Justices. In concluding his introductions, Chief Justice Kilbride recognized Michael J. Tardy, Acting Director of the Administrative Office of the Illinois Courts, and thanked the Acting Director and his staff for their work in preparing for the annual meeting of the Conference.

Chief Justice Kilbride remarked that, notwithstanding the Judicial Conference's constitutional mandate, such a gathering to improve the administration of justice would occur nonetheless because of the sense of commitment to duty shared by Illinois' judges. Contemplating the role of the courts, the Chief Justice challenged the membership of the Conference to, individually and organizationally, work toward the common goal of serving the people of Illinois with swift justice, a competent and skillful judiciary, and an efficient and capable judicial system. Chief Justice Kilbride noted that good ideas do not simply exist at the top of an organization; rather, they exist at all levels. To that extent, Chief Justice Kilbride encouraged creativity from the Administrative Office of the Illinois Courts, judges, clerks, probation departments, and all individuals of the court system to promote a culture which fosters ideals and the profound wisdom of its people.

Chief Justice Kilbride announced his expectations for moving e-Business forward in the Illinois judiciary, which is anticipated to include e-Filing, e-Records, e-Guilty, e-Tickets, e-Warrants, etc. As these concepts have existed for several years, Chief Justice expressed his hope that the Illinois judiciary would progress to e-Business practices as expeditiously as possible, developing plans for uniform standards while maintaining flexibility. To further e-Business initiatives in Illinois courts, the Supreme Court convened and commenced a committee to review e-Filing standards and existing e-Filing projects, as well as study e-Filing operations around the country to develop a collaborative process which embodies best practices for consideration and implementation in Illinois' judiciary.

Chief Justice Kilbride reminded the attendees that the purpose of the Judicial Conference, "to consider the work of the courts and to suggest improvements in the administration of justice," essentially provides a framework for a compulsory self-evaluation. The Conference, as a forum, offers its membership an opportunity to carefully examine existing practices of the judiciary and make adjustments or improvements to the court system. The message of the Conference should be one that reports on the state of the judicial branch and outlines prospective plans for achieving an enhanced and progressive judiciary in the state of Illinois. Committee charges, and work products, should embrace a visionary, strategic approach which fosters ideals, evolves the judiciary, and personifies a progressive overview. Chief Justice Kilbride expressed his interest in a more viable, robust Conference, and announced that, within the next several months, a Future of the Courts Conference would be convened to guide activities for improvement of judicial administration, and to promote public trust and confidence in Illinois' judicial system.

In closing, Chief Justice Kilbride encouraged members of the Conference to reflect on ways to enhance the quality of Illinois courts and recognize that the important work of the Conference is the foundation for improving the quality and efficiency of our justice system. He noted that the committees' work during Conference Year 2011 provides insight to the great things to come and will shape the future of the judicial branch.

The Annual Meeting continued with Conference Committee meetings devoted to finalizing Committee reports and initiating planning for Conference Year 2012. The afternoon plenary session included a presentation of each of the committees' activities in Conference Year 2011 and initial suggestions for tasks in Conference Year 2012. The following narrative summarizes the written and oral substance of those reports.

## Committee Reports

### Alternative Dispute Resolution Coordinating Committee

The Alternative Dispute Resolution Coordinating Committee monitors and assesses both court-annexed mandatory arbitration and mediation programs approved by the Supreme Court. During the course of the Conference Year, in coordination with the Administrative Office of the Illinois Courts, the Committee continued to track mandatory arbitration statistics to determine program efficacy. The Committee undertook many initiatives prescribed by the Court during Conference Year 2011. Some of those projects included: (1) planning and producing an arbitrator training video; (2) synthesizing and assimilating data from a participant satisfaction survey for arbitration attorneys, arbitrators, and litigants; (3) investigating reasons that parties reject awards in arbitration hearings; (4) finalizing development of a mentor training program for arbitrator chairpersons; and (5) crafting an amendment to Supreme Court Rule 94 concerning the arbitrator award form. The Committee also met with arbitration administrators and supervising judges of circuits with mandatory arbitration programs to discuss program operations and identify areas for improvement.

### Automation and Technology Committee

During Conference Year 2011, the Supreme Court newly constituted the Automation and Technology Committee and delineated specific directions for the Committee to work with the Special Supreme Court Committee on e-Business. The charge of the Committee on e-Business consists of reviewing various pilot projects involving e-Business in the State of Illinois and making recommendations as soon as practicable. In addition, the Committee on e-Business will suggest guidelines for expansion of e-Business initiatives in the state.

The pilot projects currently in operation involve electronic filing, warrants, orders, tickets, and records on appeal, which range in maturity from several years in operation to the beginning stages of implementation. There are contrasting business plans and operations throughout the pilot projects which may offer a solid basis for comparison and review. The Automation and Technology Committee plans to work with the other committees to identify strengths and weaknesses of each program, from the standpoint of the judiciary, and make suggestions for advancing the concept of e-Business in the courts. The Committee identified the following issues that will need to be resolved as the process of making recommendations and suggesting guidelines progresses: (1) access; (2) format; (3) control; (4) cost; (5) privacy; and (6) accommodations for unrepresented, indigent, and disabled litigants. Combining the wisdom and insight of the members of the Automation and Technology Committee with that of the Committee on e-Business will help create a prompt and synergistic set of observations, recommendations, and guidelines for the Court's consideration as it regulates the adoption of electronic tools and processes in Illinois' court system.

### Study Committee on Complex Litigation

During the 2011 Judicial Conference year, the Study Committee primarily focused its work on final review and revisions to the new Fourth Edition of the Civil Manual. The Committee completed and approved the entire text, and is in the process of framing the material in final format for publishing in hard copy and CD-ROM. The Fourth Edition features a more streamlined approach, which includes: (1) fewer footnotes; (2) form orders included in several chapters for convenient downloading from the CD-ROM; and (3) checklists at the end of each chapter for quick and easy reference.

During previous Conference years, the Committee was requested to review the Criminal Law and Procedure Benchbook, created by the Committee on Education, and to consider appropriate revisions to the Criminal Manual to assure that it remains a unique document for judges hearing complex criminal matters. In Conference Year 2011, the Committee assigned a criminal subcommittee to review the Criminal Manual and determine which topics would remain, and conversely, which would be stricken as duplicative of the Criminal Benchbook. The subcommittee created a detailed Table of Contents for the Criminal Manual which was approved by the full Committee. The subcommittee will continue to outline the chapter content and, when completed, begin drafting text for member review and revisions.

### Committee on Criminal Law and Probation Administration

As part of its charge, the Committee contemplated an update to the 2007 Specialty Court Survey. The Committee, in conjunction with the Administrative Office of the Illinois Courts, has developed an initial assessment for the purpose of determining the nature and extent of problem solving courts in each judicial circuit. This initial assessment has been sent to the Chief Judges and Trial Court Administrators for each judicial circuit.

The Committee also reviewed the following proposed amendments received from the Supreme Court Rules Committee. A proposed amendment to Supreme Court Rule 402(d)(1) would include language that would give the trial judge the discretion to participate in plea discussions upon request of the defendant. The Committee believed that the language of the proposed amendment was not adequate to guide a trial judge concerning his or her role in a Rule 402 plea discussion. As a result, a subcommittee of the Committee drafted a proposed amendment to Rule 402 which addressed the Committee's concerns. The Committee approved the subcommittee's proposed amendments to Rule 402 and returned them to the Rules Committee.

The Committee also discussed two proposed amendments to Supreme Court Rule 604(d). The first proposed amendment would expand the type of consultations, to include phone and electronic means, between a defendant and his/her attorney about defendant's contentions of error prior to filing an appeal from judgments entered as a result of a guilty plea. The second proposed amendment to Rule 604(d) would expand the materials an attorney must certify as being reviewed before filing an appeal. After review and discussion, the Committee recommended that both proposed amendments be adopted.

The Committee also discussed a proposed amendment to Supreme Court Rule 651(c) which would expand the type of methodology of consultations with the defendant about any post-conviction proceeding to include communications by phone and electronic means. The Committee recommended adoption to the Rules Committee.

Finally, the Committee received a request to review a proposed amendment to Supreme Court Rule 431(b)(4) which states, in relevant part, "that the defendant's failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects." The proposal would amend Rule 431(b)(4) to eliminate the word "failure" and revise it to state "that the fact that a defendant does not testify cannot be held against him or her \*\*\*." The Committee returned the proposed amendment to the Rules Committee with a favorable recommendation.

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

During Conference Year 2011, the Committee focused its attention on the issue of e-Discovery. A subcommittee surveyed other states and case law on this issue, as well as the report on the federal electronic discovery rules. In view of the subcommittee's research and recommendations, the Committee determined that it would propose amendments to the current discovery rules to incorporate the federal definition for electronically stored information. The Committee also determined that it would propose amendments to the current discovery rules to provide for a mandatory pre-case management conference requiring a meeting of the attorneys to address all discovery including any electronically stored information involved in the case.

The Committee also considered several proposals forwarded by the Supreme Court Rules Committee. The Committee voted to not recommend adoption of a proposal to amend Supreme Court Rule 201 to make clear that all written discovery responses, including documents and other information produced, must be served upon all other parties in a case, rather than service merely upon the party that propounded the discovery initially. Instead, the Committee adopted an alternative proposal to amend Supreme Court Rule 214 to require the responding party to identify, but not attach, the materials responsive to the request, and either copy them or make them available for copying or inspection. The proposed amendment also requires that requests and responses be served on all parties entitled to notice. The Committee adopted a related proposal to amend Supreme Court Rule 216 to require that the request to admit, and the response thereto, be served on all parties entitled to notice. The Committee also voted to not recommend a proposal to amend Supreme Court Rule 211 to provide that the rule only requires objections at evidence depositions, and not discovery depositions.

The Committee voted to recommend adoption of a proposal to amend Supreme Court Rule 208 to clarify that deposition fees and expenses of controlled expert witnesses should be borne by the party who has retained the expert witness, and not the party deposing the witness. Likewise, the Committee voted to recommend adoption of a proposal to create a new Supreme Court Rule establishing a procedure for asserting privilege or work product following inadvertent disclosures in discovery.

#### **Committee on Education**

The Committee on Education is charged with identifying ongoing educational needs for the Illinois judiciary and developing short-term and long-term plans to address those needs. For Conference Year 2011, the Committee received a continuing charge to identify emerging legal, sociological, cultural, and technical issues that may impact decision-making and court administration and to recommend and develop programs for both new and experienced judges. Additionally, the Committee is charged with examining and recommending judicial education programs offered by organizations and entities, other than the Supreme Court, as potential sources for continuing judicial education. Under this broad umbrella of judicial education and training, the Committee continued to research and recommend topics and faculty for the biennial Education Conference, the annual New Judge Seminar, the multiple training events which comprise the annual Seminar Series, and the Advanced Judicial Academy.

In accordance with its overall charge, the Committee designed, delivered and evaluated: (1) the 2011 New Judge Seminar held January 24-28, 2011 and December 5-9, 2011; (2) one Mini Seminar and two Regional Seminars held during the 2010-2011 Seminar Series; (3) the 2011 Advanced Judicial Academy held June 13-16, 2011 at the University of Illinois Champaign; and (4) the Faculty Development Workshop held September 15 - 16, 2011. The Committee continues its efforts to recruit conference and seminar faculty that represent diverse geographic, racial, ethnic, gender and cultural differences.

Last, the Committee, in coordination with the Administrative Office of the Illinois Courts, endeavored to provide updates, edits and peer review of the Illinois Judicial Benchbooks on Criminal Law and Procedure, Civil Law and Procedure, Domestic Violence, DUI/Traffic Issues, Evidence, and Family Law and Procedure.

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

During the Conference year, the Committee focused primarily on updating Volume I of the *Illinois Juvenile Law Benchbook*, which addresses juvenile court proceedings involving allegations of delinquency, addicted minors, minors requiring authoritative intervention and truant minors in need of supervision. The Benchbook also addresses confidentiality and juvenile court records.

The Committee continued its study of the applicability of the two varying standards used in guardianship cases: (1) the best interests of the minor standard arising from the Juvenile Court Act and (2) the superior rights standard arising from the Probate Act. In conjunction with its study, the Committee reviewed the amendments to the Probate Act (755 ILCS 5/11-14.1) set forth in Public Act 96-1338, which became effective January 1, 2011. The Committee determined that it resolved the issue of guardianship standards because the amendment to the Probate Act precludes the termination of guardianship if the guardian establishes that termination would not be in the best interests of the minor.

The Committee began studying the issue of disproportionate minority representation in juvenile justice and abuse and neglect cases. The Committee considered several resource materials on this issue as provided by the National Incidence Studies, MacArthur Foundation's Models for Change Initiative, and the Haywood Burns Institute. The Committee determined that judicial education and training for judges is essential because there is a need to heighten awareness of judges as to possible bias toward minorities. The Committee also determined that there are various initiatives, including standardized arrest forms, school involvement, youth outreach services, group home training and family engagement efforts, addressing this issue in Illinois circuits. Having identified the available research on this issue, the Committee will begin identifying relevant programs for the Court's consideration.

#### **Conclusion**

As evidenced by these Committee overviews, the work undertaken by the Judicial Conference in 2011 covered a broad scope of issues and topics, ranging from consideration of amendments to various Supreme Court Rules and updating manuals and bench books, to the education and training of new and experienced judges. Although many projects and initiatives were completed in Conference Year 2011, some will continue into Conference Year 2012, and additional projects will be assigned for the coming year. Thus, the work of the Judicial Conference will continue to honor its constitutional mandate and remain steadfast in its goal to improve the administration of justice in Illinois.

**Supreme Court Decisions Which the General Assembly May Wish to Consider  
Identity Theft Law - Section 16G-15(a)(7) Held Unconstitutional**

*People v. Madrigal*, S. Ct. Docket No. 110194 (March 24, 2011)

The Supreme Court declared that section 16G-15(a)(7) of the Identity Theft Law (720 ILCS 5/16G-15) was an unconstitutional violation of substantive due process under both the Illinois and federal constitutions. Section 16G-15(a)(7) provided, in part, that a person commits identity theft when the person knowingly "uses any personal identification information \*\*\* of another for the purpose of gaining access to any record of the actions taken, communications made or received, or other activities or transactions of that person, without the prior express permission of that person." The court determined that this section was not a reasonable method of preventing the targeted crime of identity theft because it did not require a culpable mental state, resulting in the possibility of an individual being subjected to a felony conviction for conduct which, under the language of section 16G-15(a)(7), did not require a criminal intent or objective. For example, under the language of this section, actions such as performing a Google search using a person's name or looking up a friend on a social networking site would be subject to criminal prosecution and a felony conviction. As such, the court concluded that section 16G-15(a)(7) could not withstand the scrutiny of the rational basis test, *ie.* the section was not *reasonably* designed to achieve its intended purpose – preventing identity theft, because it potentially punished a significant amount of innocent conduct. The court found section 16G-15(a)(7) facially unconstitutional under both the Illinois and federal constitutions but emphasized that its ruling did not affect any other provisions of the Identity Theft Law. *Affirmed.*