

2009 ANNUAL REPORT TO THE NINETY-SIXTH ILLINOIS GENERAL ASSEMBLY

January 29, 2010

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

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

Honorable Tom Cross
Republican Leader
House of Representatives
Springfield, IL 62706

Honorable Christine Radogno
Republican Leader
State Senate
Springfield, IL 62706

Dear Messrs. Madigan, Cullerton, Cross, and Ms. Radogno:

Attached is the 2009 Annual Report on behalf of the Illinois Supreme Court. I submit this Report to the General Assembly pursuant to Article VI, Section 17 of the Illinois Constitution of 1970, which requires the Supreme Court to report annually in writing to the General Assembly regarding the annual Judicial Conference. The Judicial Conference considers the work of the courts and suggests improvements in the administration of justice. In compliance with the constitutional mandate, this Report includes a summary of the work performed by the seven committees constituting the Judicial Conference.

The Committees of the Judicial Conference include: (1) Alternative Dispute Resolution; (2) Automation and Technology; (3) Criminal Law and Probation Administration; (4) Discovery Procedures; (5) Judicial Education; (6) Study Committee on Complex Litigation; and (7) Study Committee on Juvenile Justice. The annual meeting of the Judicial Conference was convened on October 22, 2009, to consider the aforementioned committees' reports and recommendations. Those reports detailed initiatives undertaken during Conference Year 2009. This Annual Report summarizes those initiatives, which also foretell of the projects and goals anticipated being undertaken by the Conference committees in 2010.

With the submission of this report to the General Assembly, the Supreme Court renews its commitment to the effective administration of justice and the management of the courts, to the careful stewardship of those resources provided for the operation of the courts, and to the development of plans and goals designed to assure that the Illinois judicial branch provides justice to our citizens and upholds the rule of law.

On behalf of the Court, I respectfully submit the Supreme Court's 2009 Annual Report to the General Assembly.

Sincerely,



Thomas R. Fitzgerald
Chief Justice
Supreme Court of Illinois

2009 Illinois Judicial Conference

The annual meeting of the Illinois Judicial Conference was held on October 22, 2009, in Chicago, Illinois. The Conference, which is authorized by Article VI, Section 17 of the Illinois Constitution of 1970, is mandated to consider the work of the courts and to suggest improvements in the administration of justice. The constitutional directive is implemented through Supreme Court Rule 41, which defines the duties and membership of the Illinois Judicial Conference. As provided by the Rule, the Conference is composed of judges from all levels 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. Also, pursuant to Supreme Court Rule, the Administrative Director serves as an ex-officio member of the Conference.

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

Supreme Court Rule 41 also authorizes the Executive Committee of the Illinois Judicial Conference. The Executive Committee acts on behalf of the Conference when the Conference is not in session. Membership of the Executive Committee consists of fourteen judges, six of whom are from the First Judicial District (Cook County) and two members each from judicial districts two, three, four and five. In addition to previewing the written reports of the conference committees, the Executive Committee also prepares and submits an agenda for the Annual Meeting for the Supreme Court's approval.

The one-day format of the 2009 Annual Meeting, consistent in length of the Annual Meetings since Conference Year 2004, minimizes judicial time away from the bench and effectively manages costs while its format promotes an efficient and thorough review of each committee's work. The meeting was convened by Chief Justice Thomas R. Fitzgerald. In his opening remarks, the Chief Justice welcomed Conference members and thanked them for the commitment of their time and talents during the Conference year. He then

acknowledged the presence of current members of the Supreme Court as well as retired Supreme Court Justice Benjamin Miller, who had also served as Chief Justice during his tenure on the Supreme Court. In concluding his introductions, Chief Justice Fitzgerald recognized Cynthia Y. Cobbs, Director of the Administrative Office of the Illinois Courts, and thanked the Director and her staff for their outstanding work in coordinating the work of the committees for the annual meeting of the Conference.

Chief Justice Fitzgerald recalled for the Conference members his comments at the 2008 Annual Meeting when he spoke of judicial independence as a fundamental principle that is a foundation to implementing improvements in the administration of justice. The Chief Justice noted that the constitutional mandate to the Court to provide for an Annual Judicial Conference to improve the administration of justice is a most serious directive. To meet this directive requires a scholarly examination of our legal system. To that end, the work of the Conference requires that each committee engage in comprehensive study, research and discussion of their charges and projects, as assigned by the Supreme Court, before proposing strategies to improve the administration of justice. This scholarly process is engaged in to make our state's judiciary better equipped to reach the correct result in every case.

Chief Justice Fitzgerald next provided an oral synopsis of the reports submitted by the Conference Committees. In summarizing the 2009 reports, the Chief Justice emphasized that the committees' work was marked by serious study. Each committee committed its energies to examination of issues and procedures, including analysis of sister jurisdictions' procedures and/or the management of similar issues in our nation's federal courts. The sum total of the work of the committees is a better judiciary.

In closing, Chief Justice Fitzgerald quoted United States Supreme Court Justice Anthony Kennedy who said that "[t]he law makes a promise – neutrality. If the promise gets broken, the law as we know it ceases to exist." With that, the Chief Justice reminded all conference members of the Supreme Court's commitment to ensure that our system of justice is marked by competence, professionalism, civility and a culture of morality within the legal profession. These values will ensure that the neutrality of the judiciary is not cast into doubt.

The Annual Meeting continued with Conference committee meetings devoted to finalizing committee reports and initiating planning for Conference Year 2010. The afternoon plenary session included a presentation from each of the committees' summarizing their activities in Conference Year 2009 and offering initial suggestions for tasks in Conference Year 2010. The following summarizes the written and oral substance of these reports.



Alternative Dispute Resolution Coordinating Committee

The Alternative Dispute Resolution Coordinating Committee monitors and assesses both the Court-annexed mandatory arbitration programs and mediation programs approved by the Supreme Court. During the course of this 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 also undertook many initiatives prescribed by the Court during Conference Year 2009. Some of those projects included (1) development of a training curriculum for new arbitrators, (2) reconsideration of a proposal to amend Supreme Court Rule 91 (Absence of a Party at Hearing), (3) consideration of an increase to arbitration program jurisdictional dollar limits and its impact, (4) development of an arbitration program participant satisfaction survey, (5) creation of a form for arbitrators to waive compensation and accept *pro bono* legal service credit in its stead, (6) consideration of arbitrator chair qualifications, and (7) examination of the reliability and applicability of a settlement data initiative. 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

In Conference Year 2009, the Automation and Technology Committee completed review of its previously developed Disaster Recovery Guide, examining in particular alternatives to continue critical court functions during a disaster and the time sensitive aspects of criminal proceedings. The Committee concluded that the relationship between the criminal court and the sheriff should be considered when planning for a disaster. As the level and scope of a disaster increases, there is a corresponding need for increased coordination with county officials and emergency management personnel, all of whom make key decisions regarding the well-being of those incarcerated.

Beyond consideration for the life and health of prisoners, attention should be focused on the constitutional and statutory rights of individuals arrested during the occurrence of the disaster. Specifically, disaster plans should include documentation on how to contact court staff during a disaster, including the state's attorney, public defender, circuit court clerk, court reporters, and possibly interpreters, as arrangements are made for hearings. Additionally, speedy trial considerations may need to be addressed for certain

categories of disasters which render it impossible to seat a jury. The Committee's additional observations may prove useful to Illinois' circuit courts in meeting the Supreme Court's directive to develop circuit specific emergency preparedness plans.

The Committee also conducted a conceptual analysis of the benefits of a secure website for use in the trial courts. The benefits of a secure website would include a common forum for trial court judges to collaborate, exchange ideas and information with judges across the state using secure list serves and document sharing capabilities, have already been initiated by the Administrative Office.

Study Committee on Complex Litigation

The Study Committee on Complex Litigation embarked on the creation of a *Fourth Edition of the Manual on Complex Civil Litigation*. This endeavor, the most comprehensive of the projects identified in the Committee's charge for Conference Year 2009, comprised the larger share of the Committee's work for this year as the members focused on planning, organizing and drafting of the next edition of the *Manual*. Subject matter to be covered in the fourth edition will include case law on construction cases.

With respect to projects and priorities carried over from Conference Year 2008, the Committee was requested to review the *Criminal Law and Procedure Benchbook* developed by the Judicial Conference Committee on Education and consider appropriate revisions to the *Manual on Complex Criminal Litigation*. The Committee anticipates that the *Criminal Law and Procedure Benchbook* will be completed and available for such review in Conference Year 2010.

Committee on Criminal Law and Probation Administration

The Committee on Criminal Law and Probation Administration continued its consideration of the utility of a criminal dispute resolution program in Illinois. In its consideration, the Committee examined programs from other states, reviewed treatises and articles on the issue, and heard presentations from persons involved in existing Illinois dispute resolution programs. Upon conclusion, the Committee reaffirmed its previous position that potential benefits exist for the use of a written guilty plea as a component of such an initiative. However, given admonishments required pursuant to Supreme Rules 402 and 402A, a statewide mandate is not necessary.

With the principles of evidence-based practices as

the back-drop, the Committee examined two offender programs for their efficacy and potential implementation. First, the concept of diversion programs for offenders convicted of certain class 3 or class 4 felonies was considered. The Committee concluded that diversion programs, and the resources needed for their implementation, could potentially conflict with principles of evidence-based practices. Secondly, the Committee examined the use of a “shock incarceration” program for certain offenders as component of the terms and conditions of probation. After examining similar programs in other states, as well as reviewing written materials on this issue, the Committee concluded that “shock incarceration” programs are in direct conflict with principles of evidence-based practices.

In *People v. Boose*, 66 Ill. 2d 261 (1977), the Supreme Court set forth factors to be considered by the trial court in determining the need to physically restrain a criminal defendant during the course of trial. The Committee reviewed the final draft of a proposed rule which would codify the holding in *Boose* to determine if the proposed rule was substantively complete. The Committee determined that the final draft was complete and addressed any possible due process issues.

The Committee also reviewed a proposed rule submitted by the Supreme Court Rules Committee governing the disclosure of privileged communication. The proposed rule would authorize an attorney who is reasonably certain a person convicted of a crime is innocent because of facts disclosed to the lawyer in a privileged communication to disclose this information to the proper authorities. The Committee concluded that the draft rule would potentially violate a defendant’s Fifth Amendment right against self-incrimination.

Since Conference Year 2005, the Committee has continued its work in monitoring the impact of the United States Supreme Court decision of *Crawford v. Washington*, 541 U.S. 36, (2004) on state court proceedings. During this time, reviewing courts in Illinois, and other jurisdictions, have addressed the various issues left unaddressed by *Crawford*. Thus, the Committee offers that its continued monitoring of the impact of *Crawford* is no longer necessary.

Committee on Discovery Procedures

With the continuing expansion in the application of digital technologies, proper management of discovery of electronically stored information is an issue confronting both the federal and state courts. Although “e-discovery” is commonly understood to mean the discovery of electronically stored information, “e-discovery” is an evolving field that extends beyond mere technology and gives rise to multiple legal, constitutional, security and privacy issues. A major component of the work of

the Committee on Discovery Procedures in Conference Year 2009 was a review of scope and substance of “e-discovery.” The product of the Committee’s study was a comprehensive report earlier submitted to the Court with the suggestion that guidelines be developed and that certain existing Supreme Court Rules be amended, which would govern the management of “e-discovery” in Illinois courts.

The Committee additionally focused on several rules which govern discovery procedures in the trial courts. A proposed amendment to Supreme Court Rule 212(a) (5) (Purposes for Which Discovery Depositions May Be Used) was offered to provide the trial court discretion to permit the use of a party’s discovery deposition at trial. The Committee’s proposed amendment arose following an appellate court decision affirming the trial court’s bar of the use of plaintiff’s discovery deposition at trial even though plaintiff died before his evidence deposition could be taken and lengthy delays were caused by defendants.

Also reviewed by the Committee was a proposal to amend Supreme Court Rule 206(h) (Remote Electronic Means Depositions) to permit electronic depositions on notice without leave of court. The Committee reasoned that current practice has been the acceptance of remote electronic depositions such that there is no need to require a party to obtain a court order. Other matters which were considered and rejected by the Committee during the Conference year included: (1) whether to define work product and privilege for purposes of objecting to discovery under Supreme Court Rule 201(b) (2) (Scope of Discovery); (2) whether general objections to interrogatories/requests to produce should be prohibited; and (3) the feasibility of contention discovery as recognized under the federal rules.

Several projects remain under discussion and are anticipated to inform the work of the Committee in the next Conference year. Included among them are: (1) whether Supreme Court Rule 210 (Depositions on Written Questions) and Supreme Court Rule 204(c) (Depositions of Physicians) can be used in conjunction to permit the formulation of questions addressed to nonparty physicians prior to deciding whether to take their depositions; (2) whether business records obtained during discovery should be presumptively admissible without requiring foundation testimony; and (3) whether the disclosures required under Rule 213(f) should include a list of any other case in which the witness has testified as an expert within the preceding four years and whether a party should be required to provide copies of all correspondence or communications between counsel and the expert.



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 2009, the Committee received a continuing charge to identify emerging legal, sociological, cultural, and technical issues that may impact decision-making and court administration and, based on these emerging issues, to recommend and develop programs for both new and experienced jurists. 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, in collaboration and coordination with the Administrative Office of the Illinois Courts, continued to research and recommend topics and faculty for the annual New Judge Seminar, the multiple training events which are contained in the annual Seminar Series, and the biennial Education Conference and Advanced Judicial Academy. During the Conference year, almost 450 Illinois judges participated in training events conducted at various locations throughout the State.

The New Judge Seminar conducted in January, 2009 provided an intensive week-long introduction to the fifty-eight (58) newest members to the Illinois bench. The Supreme Court approved 2008-2009 Seminar Series, which was comprised of six “mini” (one-day) and regional (two-day training) seminars, were presented to an audience of over 300 judges. An annual DUI Seminar was included in this training menu and provided Illinois jurists with a timely overview of legislative modifications to the management of the repeat, chronic DUI offender.

A pillar of the Supreme Court’s judicial training curriculum is the Advanced Judicial Academy. The 2009 Academy, similar to the four previous Academies, was a week-long residential seminar, held in June hosted by the University of Illinois Law School. The theme of the 2009 event, “Judicial Decision-Making in a Democratic Society”, was attended, and exceptionally well received, by seventy-eight (78) Illinois judges with representation from nearly all of Illinois circuit courts.

Education Conference serves as the centerpiece of the Supreme Court’s Comprehensive Judicial Education Plan for Illinois Judges. Work of the Committee in planning for this major biennial event that is attended by all of Illinois judges, continued in Conference Year 2009. The Committee, through its multiple work groups, researched and designed the proposed multiple elective workshops and the required core judicial

ethics and conduct sessions to be presented during Education Conference 2010. The schedule and format for the 30-hour Education Conference, along with recommendations of over one-hundred (100) Illinois judges to serve as instructors for their peers, were submitted for the Supreme Court’s review and approval in Conference Year 2009.

Faculty development remains an essential component of judicial education in Illinois. During the Conference year, a faculty development workshop and PowerPoint training were offered to all new judicial faculty to enhance their teaching skills and provide support to the Illinois judges who volunteer to teach their colleagues at Education Conference and other Supreme Court approved seminars.

Finally, the Committee continued planning for the 2009-2010 Seminar Series as well as its considerable work in drafting and updating the Illinois Judicial Benchbooks. Currently, over 2,700 paper and CD-ROM copies have been distributed. Benchbook updates and supplements were being distributed as the Annual Meeting of the Conference was being conducted.

Study Committee on Juvenile Justice

The Committee on Juvenile Justice updated Volume I of the *Illinois Juvenile Law Benchbook*, which addresses proceedings brought in juvenile court involving delinquency, addicted minors, minors requiring authoritative intervention and truant minors in need of supervision. The Committee reasonably anticipates that an update to Volume I will be available for the New Judge Seminar in December, 2009.

Further, the Committee continued its study of juvenile drug courts operating in Cook, Kane, Peoria and Will counties. The Committee discovered that each of the programs utilizes different criteria and collects limited statistics as to the program’s effectiveness. In particular, the Committee noted that the apparent absence of analytical data on recidivism rates for those successfully completing the program. As a result, the Committee has given consideration as whether other states’ standards data collection methods should be studied and implemented to gain insight and to ensure effectiveness of juvenile drug courts in Illinois.

Research of the availability and adequacy of mental health services for juveniles was continued by focusing on the Models for Change National Initiative, which promotes juvenile justice reform in several areas including mental health. The goal of the Initiative with respect to mental health for juveniles is that professionals in the fields of juvenile justice, child welfare, mental health, substance abuse and education would work collaboratively to meet the mental health needs of youth without unnecessary juvenile justice system involvement. The Committee

found the Initiative's work in Pennsylvania to be instructive with respect to encouraging collaboration among diverse groups to provide mental health services for juveniles.

Finally, the Committee discussed the applicability of the best interests of the minor standard and the superior rights standard in guardianship cases. In its discussion, the Committee monitored the status of Senate Bill 1430, which may resolve the issue of the standard appropriate in guardianship cases.

Conclusion

As in prior years, the work undertaken by the Judicial Conference in 2009 covered a broad range of issues and topics, ranging from ensuring the continuity of court operations during times of disaster to the education and training of judges. Although many projects and initiatives were completed in Conference Year 2009, some are anticipated to continue into Conference Year 2010, with additional projects to be added. Thus, the work of the Judicial Conference is ongoing. However, the work of the 2009 Judicial Conference has met its constitutional mandate to make suggestions to the Supreme Court to improve the administration of justice in Illinois.



Supreme Court Decisions Which the General Assembly May Wish to Consider

Compulsory Retirement of Judges Act - Constitutionality

In *Maddux et al. v. Blagojevich et al.*, S. Ct. Docket No. 107416 (June 18, 2009) the plaintiffs, a circuit court judge and five voters eligible to vote in judicial elections, sought a declaration from the Circuit Court of Cook County that the Compulsory Retirement of Judges Act (705 ILCS 55/1 et seq. (West 2006), which provides that a judge is automatically retired at the expiration of the term in which the judge attains the age of 75, is unconstitutional. Article VI, Section 15(a) of the Illinois Constitution states that the General Assembly "may provide by law for the retirement of Judges and Associate Judges at a prescribed age." Ill. Const. 1970, art.VI, §15(a). The Court concluded that the statute violated equal protection since, under the current language, mandatory retirement would exist for some, but not all, judges because there would exist a class of judges who would be immune from the mandatory retirement envisioned under section 15(a) of the Act. As such, the Court determined that the Act as written is unconstitutional.

Federal Copyright Act - Preemption of State Statute

In *People v. Williams*, S. Ct. Docket No. 105453 (November 19, 2009), the Supreme Court considered the State's appeal challenging the Illinois appellate court's ruling that section 16-7 of the Illinois Criminal Code of 1961 (720 ILCS 5/16-7, 16-8 (West 2004) was expressly preempted by section 301 of the federal Copyright Act of 1976 (17 U.S.C. §101 et seq. (2000). Section 16-7 is an antipiracy provision which provides that a person is guilty of unlawful use of recorded sounds or images when he intentionally offers for sale an audio or video recording without the consent of the owner. In its analysis, the Supreme Court noted that section 301 establishes a two-part test under which a state statute is preempted (1) if the works at issue are fixed in tangible form and come within the subject matter of copyright as defined by section 102 of the Act and (2) if the rights granted under state law are "equivalent" to any of those exclusive rights within the general scope of copyright that are provided by the Act. As to the first prong, the court concluded that the sound recordings that defendant offered for sale - and which were the subject of defendant's prosecution under section 16-7 - clearly fell within the subject matter of copyright, as section 102(a) (7) of the Act provides protection for "sound recordings." As to the second prong, the court determined that the elements of copyright infringement under the federal Act were equivalent to the elements of the crime of unlawful use of recorded sounds under section 16-7. Therefore, section 16-7 of the Criminal Code is expressly preempted by section 301 of the federal Copyright Act.