

2010 ANNUAL REPORT TO THE NINETY-SEVENTH ILLINOIS GENERAL ASSEMBLY

January 28, 2011

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:

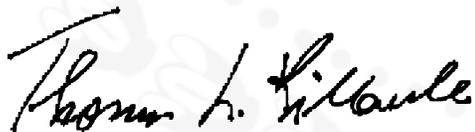
Attached is the 2010 Annual Report on behalf of the Illinois Supreme Court. I submit this Report to the General Assembly pursuant to Article VI, Section 17 of the Illinois Constitution of 1970, requiring the Supreme Court to report annually in writing to the General Assembly regarding the annual Judicial 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 six committees constituting the Judicial Conference.

The Committees of the Judicial Conference include: (1) Alternative Dispute Resolution; (2) Criminal Law and Probation Administration; (3) Discovery Procedures; (4) Judicial Education; (5) Study Committee on Complex Litigation; and (6) Study Committee on Juvenile Justice. The annual meeting of the Judicial Conference was convened on October 21, 2010, to consider committee reports and recommendations. Those reports detailed initiatives undertaken during 2010. The annual report summarizes those initiatives and foretells of the projects and goals anticipated by the Conference committees in 2011.

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 2010 Annual Report to the General Assembly.

Respectfully,



Thomas L. Kilbride
Chief Justice



2010 Illinois Judicial Conference

The annual meeting of the Illinois Judicial Conference was held on October 21, 2010, 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 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 on-going 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 committees' work.

The Executive Committee, 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, six of whom are from the First Judicial District (Cook County) and two members each 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.

As in prior years, the 2010 Annual Meeting of the Judicial Conference was conducted in a one-day format to decrease judicial time away from the bench, and to effectively manage costs, while still providing a forum for a thorough review of each committee's work. The meeting was convened by then Chief Justice Thomas R. Fitzgerald, who welcomed Conference members and thanked them for their diligent service throughout the conference year. He then acknowledged each of the current members of the Supreme Court: Justice Charles E. Freeman; Justice Anne M. Burke; Justice Robert R. Thomas; Justice Rita B. Garman; Justice Lloyd A. Karmeier; incoming Chief Justice Thomas L. Kilbride; as well as retired Supreme Court Justice Philip Rarick.

In his remarks, Chief Justice Fitzgerald reflected on his nearly thirty years of judicial service in the Illinois Courts. On September 14, 2010, Chief Justice Fitzgerald had announced his retirement, effective October 25, 2010. The Chief Justice commented that his career was marked by duty and an abiding care and respect for the fair administration of justice. He reflected on the 1980's Greylord Investigation and scandal that had shaken the community and damaged the public's trust in the judiciary. In relating the events which followed, Justice Fitzgerald admonished that Greylord should remain a life-lesson for all lawyers and judges to always sustain the commitment to do the right thing.

In closing, Chief Justice Fitzgerald challenged all judges to continue to commit themselves to the highest standards of professional practice, "to do it the way it has to be done, to be noble and good."

The Annual Meeting continued with Conference committee meetings devoted to finalizing committee reports and initiating planning for Conference Year 2011. The afternoon plenary session included a presentation from each of the committees summarizing their activities in Conference Year 2010 and offering initial suggestions for tasks in Conference Year 2011. The Committee on Automation and Technology had not been charged by the Court to meet this conference year, and therefore did not present a report. However, the Committee will



be re-constituted in 2011. The following summarizes the written and oral substance of the committee reports presented:

Alternative Dispute Resolution Coordinating Committee

The Alternative Dispute Resolution Coordinating Committee monitors and assesses both the court-annexed mandatory arbitration 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 and trends to determine program efficacy.

The Committee also undertook many initiatives prescribed by the Court during Conference Year 2010. Some of those projects included (1) finalization of a training curriculum for new arbitrators, (2) planning for production of an arbitrator training video, (3) development of a participant satisfaction survey for arbitration attorneys and litigants, (4) drafting a recommendation concerning a settlement data initiative, (5) reviewing the collection method of statistics relating to arbitration programs, (6) developing a survey to investigate the reasons for rejection of awards in arbitration hearings, (7) exploring the development of a mentor training program for arbitrator chairpersons, and (8) examining the issue of residency requirements for arbitrators. 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. As a final matter, the Committee monitored existing court-annexed mediation programs in Illinois.

Study Committee on Complex Litigation

The Study Committee on Complex Litigation primarily focused its work on writing, editing and approving the new *Fourth Edition of the Manual on Complex Civil Litigation*. The Committee projected completion of its work on the Manual by the end of Conference Year 2010. New subject matter to be covered in the fourth edition will include case law on declaratory judgment and construction cases. The Committee also reviewed the *Criminal Law and Procedure Benchmark* developed by the Judicial

Conference Committee on Education. After review, the Committee determined that revisions to the *Manual on Complex Criminal Litigation* should be the focus of their Conference Year 2011 activities.

Committee on Criminal Law and Probation Administration

The Committee on Criminal Law and Probation Administration analyzed various statutes and recommendations concerning the use of video conferencing in criminal proceedings. The Committee concluded that a Supreme Court rule would provide uniformity for the utilization of video conferencing technology in such proceedings.

The Committee continued its study 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. The Committee concluded that a Supreme Court rule providing minimum guidelines is necessary.

With respect to use of video conferencing and the application of criminal dispute resolution programs, the Committee has forwarded draft rules to the Administrative Director for management with the Court.

Additionally, the Committee commenced discussion on the update to the 2007 Specialty Court Survey. In that regard, the Committee acknowledged receipt of information concerning new Drug, Mental Health, and Veterans Courts that have been established in Illinois since the presentation of the 2007 survey. The Committee is collaborating with the Administrative Office of the Illinois Courts to develop the planned updated survey instrument.

Committee on Discovery Procedures

In Conference Year 2010, the Committee on Discovery Procedures considered and disposed of several proposals forwarded from the Supreme Court Rules Committee. Specifically, the Discovery Committee recommended adoption of a proposal to amend Supreme Court Rule



204 to allow attorneys to issue subpoenas for deposition. The Committee, however, voted against a proposed amendment to the Rule which would limit fees that a physician could charge for giving deposition testimony.

The Committee also considered and recommended adoption of proposed amendments to Supreme Court Rule 216 to, among other things, limit the number of requests for admission to thirty (30); require that a party prepare requests as a separate document; to serve them separately; and, to include a warning of the consequences absent a timely response to a request.

In addition, the Committee considered and rejected two (2) other proposals concerning discovery procedures. First, the Committee rejected a proposal which would permit the formulation of questions addressed to nonparty physicians prior to deciding whether to take their depositions. The Committee determined that the formulation of such questions would not be feasible because (1) compensation for answering any questions could become an issue; (2) a doctor could use the proposed questions as an escape mechanism to avoid a deposition; (3) the questions could be used as a means to get around the *Petrillo* limitations; or (4) privacy concerns could become an issue. The second proposal concerned mandating disclosure of a list of cases in which a witness had previously testified as an expert within the prior four years and disclosure of all correspondence or communications between counsel and the expert.

Pending with the Committee is the development of proposed rules to govern e-Discovery. Specifically, the Committee is charged with the task of drafting proposed amendments to select Supreme Court Rules, as well as guidelines to assist trial court judges in addressing e-Discovery issues. Preliminarily, during Conference Year 2010, the Committee monitored treatment of proposed amendments to e-Discovery rules currently under review by the federal court in the Northern District, Illinois; examined e-Discovery rules in other states, as well as guidelines established by the Conference of Chief Justices.

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 2010, 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 judges. Additionally, the Committee is charged with examining and commending 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.

Education Conference serves as the centerpiece of the Supreme Court's *Comprehensive Judicial Education Plan* for Illinois Judges. The 2010 Education Conference, which had as its theme *Judging in a Diverse America*, was held in February and April, 2010. The Conference is a 30-hour training event which, in 2010, provided over 50 sessions for nearly all of the 958 trial and appellate court judges. Sessions were grouped into four tracks: civil, criminal, family, and judicial conduct, ethics and professionalism.

The annual New Judge Seminar, conducted in December, 2009, provided an intensive week-long introduction to the thirty-eight (38) newest members to the Illinois bench. Judicial ethics and conduct, including discussions concerning attendance, timeliness and, other issues related to professional conduct, were topics presented by experienced faculty. The curriculum is designed to aid a new judge's transition to the bench, help develop skills necessary to become an effective jurist and, promote an increased knowledge of various



substantive and procedural topics. Planning is currently underway for the next New Judge Seminar to be held in January, 2011.

The Committee also focused its attention on preparing for the Annual Seminar Series and the Advanced Judicial Academy. Specifically, the Committee designed and initiated planning of the 2010-2011 Seminar Series approved by the Court. Further, the Committee initiated planning and development of curriculum for the June 2011 Advanced Judicial Academy, the theme of which is *To Have or Have Not: The Impact of Poverty and Wealth on Justice*. Finally, the Committee continued its considerable work in drafting and updating the Illinois Judicial Benchbooks. Currently, over 3,700 paper and CD-ROM copies have been distributed. The Committee also focused on faculty development, reviewed proposed non-judicial conference judicial education programs and providers, and proposed modifications to the *Comprehensive Judicial Education Plan*, matters which are pending with the Court.

Study Committee on Juvenile Justice

During Conference Year 2010, the Committee on Juvenile Justice focused primarily on updating Volume II of the *Illinois Juvenile Law Benchbook*, which addresses proceedings brought in juvenile court involving allegations of abuse, neglect, dependency and termination of parental rights. The Committee reasonably anticipates that an update to Volume II will be available for the New Judge Seminar in January, 2011.

Further, the Committee continued its study of juvenile drug courts in Illinois by examining other states' juvenile drug courts, finding that such programs are often evaluated through the use of standards for measuring recidivism, retention and sobriety. The Committee also found that national organizations have created standards for specialty courts that could be utilized similarly in Illinois to measure the effectiveness of juvenile drug courts. The Committee determined that the effectiveness of juvenile drug courts depends on adequate funding for programs in the community, which offer an alternative to drug use, and depends on addressing the often underlying mental health issues of juvenile drug users. The Committee concluded that the efficacy of

juvenile drug courts is highly dependent on addressing other issues, including funding and mental health. The Committee also continued its study of accessing mental health services for juveniles in Illinois. The Committee found that there are resources and data available through federal and national organizations concerning the provision of mental health services for juveniles. The Committee concluded that lack of adequate funding remains a major barrier to the provision of mental health services for juveniles.

Additionally, the Committee discussed the applicability of the best interests of the minor standard versus the superior rights standard in adjudicating guardianship cases. In that regard, the Committee monitored the status of Senate Bill 1430, which would answer the question regarding the standard to be applied in such cases. If passed, the Bill would amend the Probate Act to provide that a guardianship shall not be terminated by a court unless the court finds, based upon clear and convincing evidence, that there has been a material change in circumstances since the guardianship was created and that termination is in the minor's best interest.

Conclusion

As in prior years, the work undertaken by the Judicial Conference in 2010 covered a broad scope of issues and topics, ranging from the use of video conferencing in criminal proceedings, updating manuals and benchbooks, to the education and training of new and experienced judges. Although many projects and initiatives were completed in Conference Year 2010, more are anticipated to continue into Conference Year 2011, and additional projects will be assigned. Thus, the work of the Judicial Conference is ongoing. The work of the 2010 Judicial Conference has met the 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

Medical Malpractice -

Noneconomic Damages Caps

In *Lebron et al. v. Gottlieb Memorial Hospital, et al.*, S. Ct. Docket Nos. 105741, 105745 cons. (February 4, 2010) plaintiffs challenged the caps on noneconomic damages set forth in section 2-1706.5 of the Code of Civil Procedure (735 ILCS 5/2-1706.5 (West 2008)), which was adopted as part of Public Act 94-677. The Supreme Court determined that section 2-1706.5 of the Code of Civil Procedure is unconstitutional because placing a limitation on noneconomic damages in medical malpractice actions violates the separation of powers clause of the Illinois Constitution by encroaching upon the inherent power of the judiciary. In so holding, the court relied on its decision in *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997), which held that a cap on noneconomic damages violates the separation of powers clause because it functions as a legislative remittitur and thereby encroaches on the power of the judiciary to reduce excessive verdicts. The court reasoned that section 2-1706.5, like the statutory damage caps held unconstitutional in *Best*, unduly infringes upon the fundamentally judicial prerogative of determining whether a jury's assessment of damages is excessive within the meaning of the law such that a remittitur is appropriate. The court furthermore concluded that, because Public Act 94-677 contains an inseverability clause, it is invalid and void in its entirety.

Nursing Home Care Act -

Federal Preemption

In *Carter v. SSC Odin Operating Company*, S. Ct. Docket No. 106511 (April 15, 2010), plaintiff entered into a written "Health Care Arbitration Agreement," agreeing to submit to binding arbitration. Plaintiff subsequently filed a complaint alleging violations of the Nursing Home Care Act and the Wrongful Death Act for defendant's failure to provide adequate and properly supervised care. Defendant responded that both counts of the lawsuit were precluded by the arbitration agreement and filed a motion to compel arbitration based on section 2 of the Federal Arbitration Act (FAA). The supreme court held that the public policy behind the antiwaiver provisions of sections 3-606 and 3-607 of the Nursing Home Care Act are not grounds as exist at law or in equity for the revocation of any contract within the meaning of section 2 of the FAA (9 U.S.C. § 2 (2000)). The court explained that section 2 of the FAA permits voiding of an arbitration agreement only on such grounds as exist at law or in equity for the revocation of any contract. In so holding, the court explained that the United States Supreme Court's decisions in *Southland Corp. v. Keating*, 465 U.S. 1 (1984) and *Preston v. Ferrer*, 552 U.S. 346 (2008) make clear that state statutes are preempted by the FAA if the statutes, as applied, preclude the enforcement of federally protected arbitration rights, regardless of whether the state statutes specifically target arbitration agreements. Here, the antiwaiver provisions of the Nursing Home Care Act purport to invalidate arbitration agreements in a specific type of contract, those involving nursing care, and for that reason they are not a defense generally applicable to "any contract."

