2005 ANNUAL REPORT TO THE NINETY-

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January 31, 2006

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

Honorable Emil Jones, Jr.
President of the Senate
State Senate
Springfield, Illinois 62706

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

Honorable Frank C. Watson
Republican Leader
State Senate
Springfield, Illinois 62706

Gentlemen:

Attached is the 2005 Annual Report 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 several committees which make up the Judicial Conference. In addition, this report includes a summary of selected Supreme Court decisions which are offered for the General Assembly's consideration. In offering these matters for the Legislature's consideration, the Court is not unmindful of the respective roles of the General Assembly and the Court. While we intend no intrusion upon the prerogatives of the General Assembly in the exercise of its authority, we do respectfully offer these matters for your consideration and look forward to the General Assembly's continued responsiveness and support.

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) Education, (6) Study Committee on Complex Litigation, and (7) Study Committee on Juvenile Justice. The Judicial Conference was convened on October 20, 2005, to consider the aforementioned committees' reports and recommendations. Those reports detailed initiatives undertaken by the respective committees during Conference Year 2005. This Annual Report summarizes those initiatives, which also foretell of the projects and goals anticipated to be undertaken by the conference committees in 2006.

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 court system is meeting the needs of our citizens.

On behalf of the Court, I respectfully submit the Supreme Court's 2005 Annual Report to the General Assembly.

Sincerely,

Robert R. Thomas
Chief Justice
Supreme Court of Illinois

2005 Illinois Judicial Conference The Annual Meeting of the Illinois Judicial Conference was held on October 20, 2005, in Chicago. The Conference, which is authorized by Article VI, 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 Supreme Court Rule 41, which defines the duties and the membership of the Illinois Judicial Conference. Consistent with the Rule, the Conference is composed of judges from every level of the judiciary representing Illinois' five judicial districts. The Justices of the Illinois Supreme Court, including the Chief Justice, who presides over the conference, also serve as members.

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. Senior level staff of the Administrative Office of the Illinois Courts serve as liaisons to the committees to support their work as defined in the committee charge.

The Executive Committee, which is also authorized by Supreme Court Rule 41, acts on behalf of the Conference when the Conference is not in session. This Committee is comprised of fourteen judges, six of whom are from the First Judicial District (County of Cook) and the remaining eight of whom are 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 2005 Annual Meeting of the Judicial Conference was, for the second consecutive year, consolidated into a one-day format in order to effectively manage costs during difficult budgetary times and minimize judicial time away from the bench. The meeting was convened by the Chief Justice of the Supreme Court of Illinois, the Honorable Robert R. Thomas. In his opening remarks, Justice Thomas 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, Phillip J. Rarick, Seymour Simon and John Stamos. Noting especially former Chief Justice Mary Ann G. McMorrow, Chief Justice Thomas commended the former Chief Justice for her leadership in pioneering women in the law and for her excellent stewardship of Illinois' judicial branch of government during the past three years.

In brief, Chief Justice Thomas remarked that the recent and remarkable occurrence of two simultaneous vacancies on the United States Supreme Court had moved the humble judicial branch of government to the forefront of public discourse. Further, the new Chief offered that as the least visible, and therefore the least understood branch of government, this new level of prominence serves the interests of both the public and the judiciary. The executive branch, as embodied by the president, defines the news. The news channels are

"The Supreme Court shall provide by rule for an annual judicial conference to consider the work of the courts and to suggest improvements in the administration of justice and shall report thereon annually in writing to the General Assembly not later than January 31." Article VI, Section 17, Illinois Constitution

dominated by coverage of presidential elections, both general and primary, presidential news conferences, presidential policy initiatives, and even presidential vacations. The legislative branch is perhaps only slightly less visible, with cable television including channels devoted exclusively to the business and proceedings of Congress. In contrast judicial proceedings for the most part are not televised, its judicial campaigns not covered, and often the names and faces of the judiciary are unknown to the public.

Justice Thomas noted that within the valuable civics lesson that a Supreme Court vacancy brings, lies the opportunity to relate the essential role that the judiciary plays in our constitutional system. Preserving the balance of power between the executive and legislative branches, protecting fundamental rights, ensuring that laws passed by the legislature are enforced fairly and fully, and that rights set forth on paper are not just empty promises, incapable of enforcement or vindication by a neutral tribunal, are but a few of the core duties of the judicial branch that, from time to time, should be brought to the public's collective conscience.

In closing, Chief Justice Thomas commented that the important work of the Conference, achieved through its committees, is a hint of the great things to come that will continue to shape the very bright future of Illinois' judicial branch and the administration of justice.

The Annual Meeting continued with time dedicated to Conference committee meetings, devoted in part to finalization of the Committees' annual reports and to preliminary planning for Conference Year 2006. The afternoon plenary session included a presentation of each of the committees' activities in Conference Year 2005 as detailed in the annual reports and recommendations to the full Conference. The following summarizes the written and oral substance of those reports:

Alternative Dispute Resolution Coordinating Committee

The Alternative Dispute Resolution Coordinating Committee monitored both Court-Annexed Mandatory Arbitration Programs and Court-Sponsored Major Civil Case Mediation Programs.

Court-Annexed Mandatory Arbitration

As in prior years, the Committee met with arbitration administrators and supervising judges of circuits with mandatory arbitration programs. Topics for discussion included the amendment of Supreme Court rules and several programmatic issues raised by arbitration administrators and supervising judges.

The Committee forwarded to the Supreme Court Rules Committee proposed amendments to Supreme Court Rule 87(e) (Appointment, Qualification and Compensation of Arbitrator), and Supreme Court Rule 91(a) (Absence of a Party at Hearing). The proposed amendment to Rule 87(e) would permit arbitrators to be paid an additional hearing fee for those matters which extend beyond the two-hour hearing limit, pursuant to prior motion and at the discretion of the presiding arbitration judge. The proposed amendment to Rule 91(a) would require major participants in cases to be present at arbitration.

Court Sponsored Mediation Programs

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

During Conference Year 2006, the Committee plans to continue to monitor court-annexed mandatory arbitration programs; oversee and facilitate the improvement of court-approved mediation programs; continue to study, draft and propose rule amendments in light of suggestions from program practitioners; and to study and evaluate other alternative dispute resolution options such as summary jury trials.

Committee on Criminal Law and Probation Administration

The Committee on Criminal Law and Probation Administration has devoted time to address strategies to monitor, support and improve probation practices throughout the state. There has been focus on probation's work in assessing, intervening and monitoring specialized offender populations, which include domestic violence, gang, drug, and sex offenders. Another focus of this committee's work has been on the changing role of probation as it relates to the implementation of the Evidence-Based Practices (EBP).

There has been a growing interest and implementation of these problem solving/speciality courts throughout the state. While there are a number of existing established drug courts, many jurisdictions have begun to explore the feasibility of establishing such courts in their judicial circuits. Recognizing this developing trend, the Committee began exploring the role of problem solving/specialty courts in Illinois. The development and implementation of mental health courts is on the rise and is also being monitored by the Committee. To aid a jurisdiction that may be contemplating establishing a specialty court, the Committee has developed, for the Supreme Court's consideration, a guide: *Issues and Factors to Consider When Planning and Implementing Specialty Courts.*

The Committee continued to examine the utility of implementing the Youthful Offender Program. Several states have created statutes that provide for alternative sentencing for non-violent offenders to avoid the stigma of a criminal conviction. It is believed that non-violent offenders who demonstrate the ability to comply with the requirements of the court and become productive, law- abiding citizens will have a much better chance of long-term success without the burden of a record of conviction.
The Committee supports endorsing the principles underlying the Youthful Offender Sentencing Program as such reforms broaden the sentencing options for judges focusing on rehabilitation and alternative treatment. The Committee continues to support the adoption of legislation that would support Youthful Offender Programming as an effective alternative sentencing option for non-violent offenders.

The Committee continued to monitor and support revisions of Illinois' criminal law statutes to simplify and clarify existing law, to provide trial courts with a range of effective sentencing options, and to provide trial judges with the discretion essential to a fair and effective system of criminal justice. The Committee has continued to discuss and monitor the U.S. Supreme Court ruling in the case of *Crawford v. Washington* and those cases and articles which discuss how courts will review Confrontation Clause issues.

During the upcoming Conference year, the Committee intends to continue its review of probation programs and practices. With the Court's permission, the Committee will continue to examine principles and implementation in Illinois Courts of both Evidence-

Based Practices and the development of Problem Solving/Specialty Courts. The Committee will also study, review and analyze criminal law statutes. The Committee will also continue to review the existing Supreme Court Rules on criminal cases, and consider new and pending proposals to amend the Rules.

Automation and Technology Committee

The Automation and Technology Committee continued to review security and technology issues on behalf of the judiciary. Having reviewed several reports on "viruses" and "worms", the Committee focused attention on methods available to inform the judiciary on such matters. Additionally, the Committee drafted, distributed, and compiled the results of a survey on Illinois court technology, and its use. Finally, the Committee reviewed its charge to identify other technologies to be explored and considered for possible application in the judiciary, including the use of video conferencing to reduce hearing and trial time, as well as costs for expert witnesses and prisoner transport.

During the 2006 Conference Year, the Committee will continue its efforts to review the results of the Illinois court technology survey on funding, continue its efforts to evaluate and provide notice to the judiciary of security issues, and continue to review the benefits of the use of video conferencing and other technologies by the judiciary.

Study Committee on Juvenile Justice

The Study Committee on Juvenile Justice continued its preparation of an update to the *Illinois Juvenile Law Benchbook*. The Committee reasonably anticipates that an update to Volume I, which addresses juvenile court proceedings involving allegations of delinquency, minors requiring authoritative intervention, and addicted minors, will be available by December 2005.

The Committee also continued its review of various initiatives directly impacting juvenile court practice and policy. Specifically, the Committee compiled information on innovative programs, including *Redeploy Illinois* and the concept of juvenile drug courts. Additionally, the Committee discussed the best practices guidelines for delinquency cases as recommended in the *Juvenile Delinquency Guidelines*, published by the National Council of Juvenile and Family Court Judges. The Committee monitored legislation, case law, and executive initiatives, including the progress and results of the federal Child and Family Services Review and Program Improvement Plan, which are aimed at improving court performance in the processing of abuse, neglect, and dependency cases.

In the next Conference year, the Committee plans to continue its review of juvenile justice practices and policies and other issues of concern in proceedings brought in juvenile court. The Committee will publish the update to Volume I of the *Illinois Juvenile Law Benchbook* and commence its update to Volume II of the *Illinois Juvenile Law Benchbook*, which serves as a guide to procedural, evidentiary, and substantive issues arising in proceedings involving allegations of abuse, neglect, and dependency. Finally, the Committee will continue to monitor statutory and common law developments affecting the juvenile justice system and recommend and participate in the presentation of juvenile law education programs.

Study Committee on Complex Litigation

The Study Committee on Complex Litigation tracked and reviewed case law and other legal developments in complex civil and criminal cases in order to insure that the *Illinois Manual for Complex Civil Litigation* and the *Illinois Manual for Complex Criminal Litigation* remain current. Based upon its review, the Committee determined that further updates and new chapters were necessary for both the civil and criminal manuals. The Committee drafted case law updates for the civil manual and criminal manual for decisions issued during Conference Year 2004-2005 and integrated all previous case law updates and supplements into the main text of the manuals. These materials are in the process of being finalized. The text of the manuals will continue to be available on CD-ROM which affords users the convenience of downloading and hyperlink and search capabilities.

During the next Conference year, the Committee plans to further update the *Illinois Manual for Complex Civil Litigation* and the *Illinois Manual for Complex Criminal Litigation* and to develop a supplement to expand topics covered. The Committee will also explore the impact of electronic discovery in the context of complex litigation cases.

Finally, the Committee anticipates continuing discussion on how the manuals can be formatted and disseminated to best serve Illinois judges, including the distribution of the updated CD-ROM version of the manuals with revised and updated instructions to all judges having received hard copies of the volumes.

Committee on Discovery Procedures

The Committee on Discovery Procedures considered proposed amendments to Supreme Court Rules 202, 204, 208, 213, and 216. The proposals and the Committee's actions are summarized below.

A proposed amendment to Supreme Court Rule 202 would eliminate the distinction between discovery and evidence depositions. After review, the Committee determined that the use of discovery and evidence depositions should be maintained. The Committee therefore forwarded its recommendation to reject the proposal to eliminate dual depositions to the Supreme Court Rules Committee.

An amendment to Supreme Court Rule 204(b) would compel the appearance of a deponent when the action is pending in another state. The proposed amendment provided that the petition to issue a subpoena to compel the appearance of the deponent or for an order to compel the giving of testimony by the deponent shall be filed with the circuit court in accordance with such court's procedure or local rule for issuing a subpoena for a foreign action. The proposal remains under review by the Committee. The proposal to amend Rule 213(g) would preclude testimony disclosed in an evidence deposition from acting as a disclosure under Rule 213. The Committee recommended that Rule 213(g) be amended as proposed and forwarded its recommendation to the Supreme Court Rules Committee.

The Committee also considered a proposal to amend Supreme Court Rule 208(d) to provide that the trial court may award to any party in whose favor judgment is entered, the reasonable cost of any appearance fee charged by any non-retained physician witness who testified at trial or at an evidence deposition or at a videotaped evidence deposition that was used at trial. Upon review, the Committee voted to disapprove the proposed amendment to Rule 208(d).

Finally, the Committee considered and rejected an amendment to Supreme Court Rule 216 which would permit an attorney to sign a statement or objection for the party in response to a request to admit. Although the Committee rejected amending the Rule, there was discussion concerning allegations for abuse surrounding the strict requirements for responding to a Rule 216 request to admit, and possible means for eliminating such abuse.

In addition to consideration given to proposed rule amendments, the Committee discussed the increasing problem of the failure to receive relevant information before trial. Some thought was given to the possibility of creating a new rule to require mandatory disclosure of relevant documents similar to the disclosure requirements set forth in Rule 222.

In the next Conference year, the Committee plans to continue its discussion of proposed amendments to Rule 204, eliminating the abuses associated with the application of Rule 216, and the feasibility of rule on mandatory disclosure of relevant information prior to trial. The Committee also plans to study the production of documents and responses to interrogatories. Finally, the Committee will review any proposals submitted by the Supreme Court Rules Committee.

Committee on Education

In June 2005, the Committee on Education oversaw the presentation of the 2005 Advanced Judicial Academy in Champaign. The Academy, which examined the changing public expectations of the Courts in an era of technological, social and political change, featured nationally and internationally prominent speakers on the topic of judicial independence. In addition to the Academy, the Committee conducted a full schedule of seminars during the 2004-2005 Judicial Conference year, presented a New Judge Seminar and conducted a Faculty Development Workshop for judges teaching Judicial Conference Programs. The seminar series included six regional (2 day) seminars and five mini (1 day) seminars. Faculty for all programs were assisted by staff of the Administrative Office of the Illinois Courts.

In addition to the annual seminar series, the Committee significantly revised the annual New Judge Seminar curriculum, with the approval of the Court, to incorporate both substantive law sessions as well as “workshops and “skill- building” techniques to ensure that new judges can identify and apply the requisite legal knowledge and judicial skills as they begin careers on the bench. Lastly, the Committee conducted a judicial education “needs assessment” through surveys sent to each Illinois trial and appellate judge and, in collaboration with the Administrative Office, oversaw the Resource Lending Library for Illinois judges.

During the upcoming Conference year, the Committee will plan and present the 2006 Education Conference, the 2005-2006 seminar series, including regional and mini seminars, a Faculty Development Workshop, and a New Judge Seminar. In addition to these activities, the Committee will develop a proposed 2006-2007 seminar series, apply to the Illinois Department of Transportation for funding to conduct the annual seminar on issues related to driving under the influence, and issue an updated Resource Lending Library Catalog.

Supreme Court Decisions Which the General Assembly May Wish to Consider

Adoption Act – Appointment of Counsel on Appeal

In *In re Adoption of L.T.M.,* S. Ct. Docket Nos. 95746, 97947 cons. (January 21, 2005), this court held that the enactment of a statutory scheme that provides appointed counsel for indigent parents facing termination of parental rights under the Juvenile Court Act, but not under the Adoption Act, violates the equal protection clause of the fourteenth amendment. In so holding, this court reasoned that a parent who stands to lose his parental rights under the Adoption Act if he is found unfit is in a very similar position to a parent who stands to lose the very same constitutional rights, based on the very same finding, in proceedings under the Juvenile Court Act

Section 1(D)(q) of the Illinois Adoption Act – Constitutionality

In *In re D.W.,* S. Ct. Docket Nos. 97292, 98896 cons.(March 24, 2005), this court considered the constitutionality of section 1(D)(q) of the Illinois Adoption Act (Act) (750 ILCS 50/1(D)(q) (West 2000)). While section 1(D)(q) of the Act denies respondents an opportunity to rebut its presumption of parental unfitness, respondents charged with unfitness under section 1(D)(i) for similar and, in some instances, more serious offenses are granted an opportunity to rebut the presumption of unfitness. As both sections based their presumptions of parental unfitness on prior convictions, this court found no compelling state interest in having different presumptions in similar statutory provisions. Accordingly, we held that, in mandating a conclusive presumption of parental unfitness, section 1(D)(q) was violative of equal protection and, thus, unconstitutional.

Recovery of Fraudulently Obtained Public Funds - Standing

In *County of Cook ex rel. Robert F. Rifkin, et a*l. v. *Bear Stearns & Company, Inc. et al.,* S. Ct. Docket No. 97022 (June 3, 2005), this court considered the constitutionality of section 20-104(b) of the Code of Civil Procedure (735 ILCS 5/20-104(b) (West 1998)), which purports to confer standing on private citizens to sue if the appropriate government official fails to file suit or arrange for settlement of the action, after notice. In this action, the court held that section 20-104(b) is an invalid usurpation of the constitutional authority of the State's Attorney. Here, the county was the real party in interest and, under the Constitution, could be represented only by the State's Attorney.

Section 4.1(a) of the Illinois Interest Act – Implicit Repeal

In *U.S. Bank National Association v. Clark*, S. Ct. Docket No. 98379 (September 22, 2005), this court held that the limitation on lender changes in section 4.1(a) of the Illinois Interest Act (Act) (815 ILCS 205/4.1(a) (West 2002)) was implicitly repealed by the General Assembly's 1981 amendment to section 4 of the Act. Our court further found that neither of the opt-out provisions of the federal Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA) (12 U.S.C.S. §1735f-7a (2000)) have been applied by the legislature. Therefore, the court concluded that section 501 of the DIDMCA preempts section 4.1(a)'s limitation on points and fees.

Real and Personal Property – Tax Liens

In In re Application of the County Collector, S. Ct. Docket No. 97165 (October 20, 2005), this court affirmed the tax sale of real estate belonging to a disabled person who lacked actual notice of the sale. In conclusion, we noted the circuit court's suggestion that, when a patient is hospitalized for mental illness and no family member or guardian is available, the legislature might consider allowing the hospital to notify the county collector, under seal, of the patient's situation, to permit the tolling of any time periods relating to the payment of taxes. This court expressed no opinion on the wisdom of this suggestion but agreed that the issues raised in the case merited legislative attention**.**