

**ANNUAL REPORT
OF THE
STUDY COMMITTEE ON COMPLEX LITIGATION
TO THE ILLINOIS JUDICIAL CONFERENCE**

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I. STATEMENT ON COMMITTEE CONTINUATION

The Study Committee on Complex Litigation is comprised of judges from across the state who have significant experience with complex litigation. The purpose of the Committee is to make recommendations, through proposed rules or other procedures, to reduce the cost and delay attendant to lengthy civil and criminal trials with multiple parties or issues and thereby improve the administration of justice in complex cases throughout Illinois. The Committee also provides yearly updates to its Illinois Manual for Complex Litigation (Civil and Criminal). Historically, the Committee has concentrated its attention on creating the manuals and producing annual updates and supplements thereto.

The Committee received a new charge for Conference Year 2006. As before, the Committee is charged with preparing revisions and updates and developing new topics, as necessary, for the manuals. The Committee is also requested to maintain the forms contained in the Manual Appendix. In addition, the charge also provides that the Committee will study and make recommendations regarding the development of a forum for judges to disseminate information regarding complex litigation practices and procedures that have successfully brought complex cases to fair and prompt disposition. Finally, the charge states that the Committee shall study and make recommendations regarding the management of multiple overlapping litigation and other problems associated with complex litigation.

The Committee believes that its work in this regard contributes to the mission of the Conference and provides a valuable source of information for judges who preside over complex cases in Illinois. As such, the Committee requests that it be continued as a full standing committee of the Illinois Judicial Conference in order to complete its work on the important projects identified in the Committee's charge.

II. SUMMARY OF COMMITTEE ACTIVITIES

In addition to the general charge for Conference Year 2006, several projects/priorities were identified for the Committee's work during the Conference year:

- Review definitions of complex civil and criminal litigation to assure proper focus and content for the Civil and Criminal Manuals for Complex Litigation;
- Explore the development of an Alternative Dispute Resolution section for the Civil Manual;
- Study and make recommendations on the development and use of centralized document depositories in complex litigation cases throughout Illinois; and
- Undertake any such other projects or initiatives that are consistent with the Committee charge.

The following briefly summarizes the Committee's work during the Conference year and the status of these projects/priorities:

A. Review Definitions of Complex Civil and Criminal Litigation

Chapter two of both the Manual for Complex Civil Litigation and the Manual for Complex Criminal Litigation currently contains text on defining and identifying complex litigation. The Committee reconsidered the definition of complex litigation during the 2004 Conference year when it assessed the utility of the manuals and engaged in discussions regarding the organization of the manuals, as well as their content. However, no changes to the pertinent text in Chapter two of either of the manuals were made at that time. The members concluded that the current text was sufficient but agreed that periodic review of the definitions was advisable to assure proper focus and content of the manuals.

B. Development of an Alternative Dispute Resolution (ADR) Section

A considerable amount of the Committee's work during this Conference year was devoted to the development of a new ADR section for the Civil Manual. This section will specifically focus on the use of ADR in complex civil cases in Illinois state courts. The new section defines various ADR techniques that are available to the parties and discusses legal authority that allows the courts to facilitate or impose ADR in complex cases in Illinois. The section also discusses how a judge can best select cases to undergo ADR and then explains how ADR is used in specific types of complex cases, such as class actions, mass torts, and construction and real estate disputes. The text concludes with a brief discussion of the future of ADR and a list of the resources available to the parties and the bench in Illinois.

After the Committee approves final revisions to the ADR section, it will be included in the completed text of the revised Civil Manual, to be disseminated later this year.

C. Expanded Development and Use of Centralized Document Depositories

During the 2006 Conference year, the Committee studied the use of centralized document depositories and discussed whether to recommend an expanded use of such facilities in Illinois. As noted in the current text of the Civil Manual, the documents produced in a complex case will inundate a clerk's office if the court instructs the parties to place them in the court file. Central document depositories can promote efficient and economical management of voluminous documents in multi-party litigation. A document depository ensures easy access to documents by all parties and spares the clerk the burden of holding all the documents. The Committee noted that document depositories have been utilized in Illinois for asbestos litigation in Madison County. The Committee members reviewed documents pertinent to this issue and recognized the utility of document depositories during the discovery process and for facilitating

trials. Accordingly, the Committee agreed to forward to the Court a favorable recommendation that use of such facilities be expanded in Illinois for appropriate cases.

D. Updates for the Civil and Criminal Manuals

The Committee continued to update the Civil and Criminal Manuals, the content of which are briefly described as follows:

1. Civil Manual. The first edition of the Illinois Manual for Complex Civil Litigation was completed in 1991. Subsequently, the Committee produced revised editions in 1994 and 1997, the last of which continues to be updated each year. Over 200 judges have received copies of the manual, and it has been used as the basic text for a judicial seminar on complex litigation. The book covers many issues that can arise in a complicated civil case, from initial case management through discovery, settlement, trial, and appeal. Chapters also address special and recurring problems of complex cases, including class action proceedings, parallel actions in federal court and the courts of other states, and mass tort litigation. The manual seeks to provide practical advice for handling cases that risk becoming protracted and consuming disproportionate amounts of judicial resources.

2. Criminal Manual. The first edition of the Illinois Manual for Complex Criminal Litigation appeared in 1997. Its thirteen original chapters cover topics such as identifying complex criminal litigation, handling complex grand jury proceedings, and managing the pretrial, trial, and sentencing phases of complex criminal cases. Last year, supplements on the following topics were included in the main volume of the Criminal Manual: (1) complex post-conviction review proceedings and sentencing; (2) *Apprendi v. New Jersey*, 530 U.S. 466 (2000); (3) jury selection and *voir dire*; (4) additional sentencing issues; (5) double jeopardy; (6) prosecutorial conduct; and (7) inconsistent verdicts.

The evolving nature of the law and practice regarding complex litigation requires that the manuals be continually updated. In the past, the Committee created supplements on various civil and criminal topics with current information on the many subjects that judges confront in complex cases. Last year, the supplements were added into the main volumes of the manuals so that the reader may more easily access and use the material. The Committee will continue this practice with all future topics to be added to the manuals. During the 2006 Judicial Conference Year, the Committee members continued to monitor caselaw, rule changes, and legislation and cull new information specific to complex litigation in order to integrate it into the Civil and Criminal Manuals.

3. Manual in CD-ROM Format. Both the Civil and Criminal Manuals will continue to be available in CD-ROM format which affords users the convenience of downloading and hyperlink and search capabilities.

III. PROPOSED COMMITTEE ACTIVITIES FOR THE NEXT CONFERENCE YEAR

During the next Conference year, the Committee plans to continue monitoring and evaluating caselaw, rule changes, and legislation in order to update and supplement the Manual for Complex Civil Litigation and the Manual for Complex Criminal Litigation to keep them current. As in the past year, the Committee will integrate all new material into the main volumes, as opposed to the previous "pocket part" format, to further facilitate use of the manuals. The CD-ROM format, which is issued along with the hard copies, will contain the text of both manuals with the added convenience of downloading and search capabilities. In the next Conference year, the Committee also will work to update the forms currently contained in the Manual Appendixes and make them available electronically so that judges will have easy access to form orders.

The 2006 charge further requests that the Committee study and make recommendations regarding the management of multiple overlapping litigation and other problems commonly associated with complex litigation. During Conference Year 2004, the Committee discussed this issue and drafted a proposed new Supreme Court Rule which would supplement Supreme Court Rule 384 and increase the efficiency in the management of these cases by requiring litigants to disclose closely related litigation of which they are aware. The Committee has since learned that the Court declined to adopt the proposed rule. Accordingly, the Committee will explore other options pertinent to its charge on this issue.

IV. RECOMMENDATIONS

The Committee recognizes that centralized document depositories can promote efficient and economical management of voluminous documents in multi-party litigation during the discovery process and can facilitate the trial process. As such, the Committee recommends that the Conference forward to the Court a favorable recommendation that use of centralized document depositories be expanded in Illinois for appropriate cases.