

**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 made up of circuit court and appellate court judges with considerable experience in either civil or criminal complex litigation cases. The stated 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 has drafted and continues to maintain the *Illinois Manual for Complex Civil Litigation* and the *Illinois Manual for Complex Criminal Litigation*. In past years, the Committee has focused its attention on creating the manuals and providing yearly updates and supplements to both volumes.

For Conference Year 2007, the Supreme Court charge to the Committee included continuation of one project/priority from Conference Year 2006 and several new projects/priorities for Conference Year 2007. First, the Committee was charged with finalization of the Alternative Dispute Resolution chapter for the Civil Manual, which the Committee had initially drafted in Conference Year 2006. For the current Conference year, the Committee was asked to (1) research and study practical considerations in handling complex insurance cases, (2) review the Civil Manual to determine if text should be included with regard to construction cases, and (3) undertake any other projects consistent with the Committee's charge.

The Committee believes that its contributions are valuable to the mission of the Conference and provide a unique source of information for judges who hear complex cases. 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

As noted above, in addition to finalizing the ADR Chapter, which was carried over from Conference Year 2006, and the general charge for Conference Year 2007, the Supreme Court identified several projects/priorities for the Committee for this Conference year:

1. Research and study practical considerations in handling complex insurance cases, particularly in the context of declaratory judgements;
2. Review the Civil Manual to determine if text should be added with regard to construction cases; and
3. Undertake any such other projects or initiatives that are consistent with the Committee charge.

The following offers a brief summary of the Committee's work during this Conference year and the status of projects/priorities for Conference Years 2006 and 2007:

## **A. Conference Year 2006 Continued Projects/Priorities**

### **Finalization of the Alternative Dispute Resolution Chapter for the Civil Manual**

During Conference Year 2006, the Committee was requested to develop an Alternative Dispute Resolution (ADR) Section for the *Illinois Manual for Complex Civil Litigation*. The Committee drafted the chapter during the 2006 Conference year and forwarded it to the Alternative Dispute Resolution Coordinating Committee of the Illinois Judicial Conference in October 2006.

The ADR Committee returned the ADR chapter to the Complex Litigation Committee in June 2007 with several recommended changes and additions. The Complex Litigation Committee agreed to the changes and adopted them into the text of the ADR chapter. Among other things, the ADR Committee added text which recommends that the judge explore the settlement history of the case, then inquire if the parties are willing to have a meaningful settlement conference. The ADR Committee further recommended numerous edits throughout the chapter for conciseness and clarity which further enhanced the text with that Committee's expertise in the various ADR processes. The final version of the ADR chapter will be included in the revised Civil Manual which will be issued later this year.

## **B. Conference Year 2007 Projects/Priorities**

### **1. Research and Study Practical Considerations in Handling Complex Insurance Cases**

As part of the projects/priorities identified in the Committee's 2007 charge, the Supreme Court requested that the Complex Litigation Committee research and study practical considerations in handling complex insurance cases, particularly in the context of declaratory judgements. As such, the Committee members reviewed the text of the Civil Manual. The members considered the issue and determined that no additional text would be included during this year. However, the Committee would revisit the issue from time to time, particularly if new supreme court or appellate court dispositions would require reconsideration of, or additions to, the current text.

### **2. Reviewing the Civil Manual with Regard to Construction Cases**

As part of the Conference Year 2007 charge, the Committee also reviewed the Civil Manual to determine if text should be added with regard to construction cases. The Committee reviewed the Civil Manual and noted that, while the current text does not include a section on construction cases, such cases are discussed in the ADR chapter, which will be added to the Civil Manual later this year. The section on construction cases notes that ADR has long been used in the construction process because it helps to avoid costly delays in construction and that

many construction contracts provide some type of ADR provision. This section also briefly discusses the pilot program for the arbitration of mechanic's lien cases established in the Circuit Court of Cook County in 1998.

The Committee determined that any additional text to be added on the issue of construction cases would be put over to the next Conference year.

### 3. Updates for the Civil and Criminal Manuals

As in previous years, the Committee continued to revise and update both the Civil and Criminal Manuals. The members also reviewed the forms contained in the appendixes to both manuals to determine that they are current and remain good law, and to consider whether additional forms should be included.

**i. 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.

**ii. 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.

**iii. Appendix Forms - Civil and Criminal Manual.** During Conference Year 2007, the Committee reviewed the forms contained in the Civil and Criminal Manual Appendixes and made several changes. To the Civil Manual forms, the Committee added "Procedures Concerning Settlement of Minors' and Disabled Persons' Personal Injury and Wrongful Death Cases." These forms outline procedures to be followed in handling minors' and disabled persons' personal injury cases and actions brought under

the Wrongful Death Act. The Committee also included sample forms to be utilized in these types of cases. To the Criminal Manual forms, the Committee added new text with regard to Supreme Court Rule 605 amendments concerning negotiated pleas of guilty. The Committee also added "Suggested Judge's Death Penalty Admonishments and *Voir Dire* Instructions."

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. 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 2007 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.

**4. 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, hyperlink and search capabilities. Additionally, the forms in the Appendixes to both manuals will be available electronically so that judges will have easy access to form orders in certain types of complex cases.

### **III. PROPOSED COMMITTEE ACTIVITIES FOR THE NEXT CONFERENCE YEAR**

During the next Conference year, the Committee plans to continue monitoring and discussing complex litigation cases, rule changes, and legislation in order to update and supplement the Civil and Criminal Manuals, and the forms to the manuals, and keep them current. The revised manuals will be available later this year. As before, 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 Committee also discussed the Criminal Law and Procedure benchbook currently being drafted by judges and professors working with the Illinois Judicial Conference Committee on Education. The Complex Litigation members determined that, after the benchbook is completed, the Complex Litigation Committee may need to make certain changes to its Criminal Manual to assure that it sustains its purpose as a "how to" guide for judges handling protracted cases, and that it remains distinctly different from a criminal law benchbook.

### **IV. RECOMMENDATIONS**

The Committee is making no recommendations to the Conference at this time.