

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

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I. STATEMENT ON COMMITTEE CONTINUATION

The Illinois Judicial Conference Study Committee on Complex Litigation is charged generally with preparing revisions, updates and new topics, as necessary, for its two-volume Manual for Complex Litigation (Civil and Criminal). The Committee also is charged with making recommendations, through proposed rules or other procedures, to reduce the cost and delay typically associated with lengthy civil and criminal trials involving multiple parties and/or issues. The Committee members include Illinois circuit court and appellate court judges, who possess significant civil and criminal complex litigation experience. Historically, the work of the Committee has focused on maintaining the *Illinois Manual for Complex Civil Litigation* and the *Illinois Manual for Complex Criminal Litigation*, including the addition of form orders, pleadings, and other documents included in the Appendix to each Manual. Upon request by the Supreme Court, the Study Committee also has researched and offered proposed rules, policies and procedures to improve the administration of justice in complex litigation cases.

For Conference Year 2010, the Supreme Court's charge to the Committee contained four continued projects/priorities from Conference Year 2009. First, the Committee was asked to review the IJC Committee on Education's, *Criminal Law and Procedure Benchbook* and consider appropriate revisions to the *Manual on Complex Criminal Litigation* so that the two resources remain unique and do not significantly overlap in information. This project was carried over from 2009 and reassigned for Conference Year 2010, as the Committee awaited completion of the *Criminal Law and Procedure Benchbook*. The Committee also was asked to revise the ADR chapter in the Civil Manual to add text regarding declaratory judgment cases. The projects/priorities assigned to the Committee additionally called for new text on construction cases for the Civil Manual. Most significantly, the Committee was tasked with drafting the 4th Edition of the Civil Manual.

With respect to projects/priorities identified for the current Conference Year, the Committee was not charged with any new tasks in addition to those for 2009; rather, the Committee was requested to undertake other projects or initiatives that would be consistent with its charge.

The Committee believes that its work continues to be of value to the mission of the Conference and that completion of the new edition of the Civil Manual and thorough review and revisions, as necessary, to the Criminal Manual are critical to providing a unique reference for Illinois judges presiding over complex litigation. As such, the Committee respectfully requests that it be continued as a full standing committee of the Illinois Judicial Conference in order to complete work on the Civil and Criminal Manuals.

II. SUMMARY OF COMMITTEE ACTIVITIES

The following offers a brief summary of the Committee's work on those projects/priorities carried over from Conference Year 2009 and undertaken in Conference Year 2010.

A. Conference Year 2009 Continued Projects/Priorities**1. Review the Criminal Law and Procedure Benchbook created by the IJC Committee on Education and consider appropriate revisions to the Criminal Manual**

As part of the continued projects/priorities from Conference Year 2009, the Committee was asked to review the *Criminal Law and Procedure Benchbook* created by the IJC Committee on Education and to consider appropriate revisions to the Criminal Manual. The project was continued while the Committee awaited completion of the *Criminal Law and Procedure Benchbook*. After the benchbook was completed during the last part of Conference Year 2009, the Committee members requested and received copies in the early part of Conference Year 2010.

At the first meeting in February, the Committee chair assigned chapters from the Criminal Manual to each of the members and requested that they review the text and determine whether the content is duplicative of that contained in the Criminal Benchbook. At subsequent meetings, the Committee initiated discussions on their review of the benchbook in comparison to the Criminal Manual. The members noted that the benchbook was an excellent source of nuts and bolts information. The Committee concluded generally that the Criminal Manual will need some revisions to remain a unique resource; however, the members decided that the substantive work in this regard should be put over to the next Conference year so that work on the Civil Manual could first be completed.

2. Revise the ADR Chapter in the Civil Manual to Address Declaratory Judgment Cases

The Committee also was charged with revising the ADR chapter in the Civil Manual to add text regarding declaratory judgment cases. The Committee reviewed the ADR chapter in this regard and determined that it would include the requested text in the revised Fourth Edition of the Civil Manual. The ADR chapter has been completed and approved by the Committee, as discussed below in subparagraph (A)(4) of this report.

3. Draft Text on Construction Cases for Inclusion in the Civil Manual

The Committee discussed the request for new text to be added to the Civil Manual on construction cases, noting that the issue had been put over from Conference Year 2009 so that the text could be drafted as part of the new Fourth Edition of the Civil Manual. During the initial planning and outline discussions on the new edition, the Committee determined that there would be a chapter devoted to mechanic's liens issues. While the management of mechanic's liens issues may ultimately comprise the bulk of the text on construction cases, the Committee acknowledged that insurance and contribution issues may also be advisable for this chapter. As of the drafting of this report, the mechanic's liens chapter was still being completed and was anticipated for final review and approval in the fall.

4. Draft a 4th Edition of the Civil Manual

During Conference Year 2010, the Committee's primary focus was drafting the new Fourth Edition of the Civil Manual. The Committee had agreed during the prior Conference year that the new Civil Manual should be a return to its original intended purpose as a "how-to" guide for judges, who may regularly deal with complex litigation or may find themselves with a case that has become complex and protracted. To best achieve this goal, the Committee had agreed to create a practical guide to litigation, offering an overview of issues in the first general chapters, such as discovery, settlement and trial, then narrowing the focus later in the manual to more specialized issues, such as class actions, mass torts, and complex insurance coverage disputes.

The Committee followed the same drafting process it had initiated during the prior Conference year. After the assignment of various topics to the Committee members in Conference Year 2009, draft outlines were created and approved by the full Committee. The Professor/Reporter then began drafting chapters, starting with the general topics, with the final draft going to the Committee member assigned to that topic for review and comment. The final draft was then considered by the full Committee, revised if requested, and voted on for final approval.

During Conference Year 2010, the Committee members also agreed to include in the Fourth Edition new features intending to better assist judges utilizing this type of practical guide to navigate a complex case. The new edition will include form orders, many of which may be downloaded for use by judges. The orders will be contained within the chapter pertinent to a particular subject matter, as opposed to the current appendix format which can become unwieldy. Each chapter also includes a checklist for the judge's reference on a particular topic. Additionally, the new chapters contain fewer footnotes than the current Third Edition, resulting in a more streamlined, user friendly resource that will allow a judge to locate and reference information quickly.

Chapter 1 of the new Civil Manual, concerning preliminary problems and pre-trial procedures, was completed in Conference Year 2009. The new Chapter 1 conflates all of the most useful and relevant information currently contained in Chapters 1, 2 and 3 of the Third Edition. Drafting of the Discovery Chapter also was initiated in Conference Year 2009, but the Committee deferred finalization of this topic until the current Conference year, noting that considerable e-Discovery issues were pending at that time.

During Conference Year 2010, the Professor/Reporter drafted several chapters for the Fourth Edition, which were discussed and ultimately approved by the full Committee. While draft chapters provided the necessary framework, meeting discussions also were instrumental in fleshing out any remaining issues the members felt were important to managing a complex case. For example, new Chapter 2 Discovery will advise that a judge should be available to settle disputes during depositions in particularly contentious cases, but attorneys should be warned that only in rare cases should they resort to calling the judge. The new Chapter 3 Sanctions will contain guidance for a judge in determining whether an abuse of the discovery process has occurred, and when a judge should hold a hearing on an attorney fee petition. The approved Chapter 4 Settlement will advise

judges how to handle the growing issue of *pro se* litigants in complex cases. Consistent with the Committee charge, Chapter 5 Alternative Dispute Resolution discusses the use of ADR in declaratory judgment cases. The ADR process can be very useful in such cases since a contract relationship typically reflects an underlying business relationship between the parties, and the desire to maintain this relationship can serve as an incentive to resolve issues out of court. The new Chapter 7 Cases with Parallel Proceedings provides guidance on case coordination and issues commonly found in cases with parallel proceedings in other state courts, federal courts, or criminal courts.

As of the drafting of this report, Chapter 6 Trial is the only remaining general chapter to be reviewed by the Committee. Additionally, the Fourth Edition will include specialized chapters on Class Actions, Mass Torts, Insurance Coverage, Environmental, Consumer, and Employment Actions, and Mechanic's Liens. The Committee hopes to complete and vote to approve all or most of the Fourth Edition of the Civil Manual by the Annual Judicial Conference meeting in October 2010.

In previous years, the Committee was charged with the continuing task to revise and update both the Civil and Criminal Manuals and review the forms contained in the appendixes to both manuals to determine that they are current and remain good law. In light of the fact that the Committee is drafting a new edition of the Civil Manual, and will likely be revising the Criminal Manual during the next Conference year, no new Civil or Criminal updates were created during Conference Year 2010.

Current editions of both the Civil and Criminal Manuals are 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 will, if necessary, finalize any remaining chapters for the Fourth Edition of the Civil Manual, which have not yet been approved by the full Committee. The members also will undertake any additional editing and formatting issues necessary to produce a final document for distribution to Illinois judges.

The Committee also will resume comprehensive review of the Committee on Education's, *Criminal Law and Procedure Benchbook*, in order to make necessary revisions to the Criminal Manual. Similar to the new Civil Manual, anticipated revisions to the Criminal Manual will include creation of downloadable form orders and topic checklists for each chapter.

IV. RECOMMENDATIONS

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