

2012 ANNUAL REPORT TO THE NINETY-SEVENTH ILLINOIS GENERAL ASSEMBLY

January 31, 2013

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
Minority Leader
House of Representatives
Springfield, IL 62706

Honorable Christine Radogno
Minority Leader
State Senate
Springfield, IL 62706

Dear Legislative Leaders:

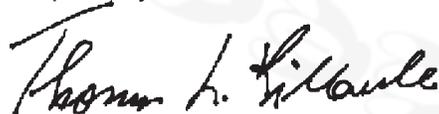
On behalf of the Illinois Supreme Court, I enclose the 2012 Annual Report of the Illinois Judicial Conference. As Chief Justice, I submit this Report pursuant to Article VI, Section 17, of the Illinois Constitution of 1970, requiring an annual report in writing to the General Assembly. The Judicial Conference considers the work of the courts and offers improvements in the administration of justice. In compliance with the constitutional mandate, this Report includes a summary of the work performed by the eight committees constituting the Judicial Conference.

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) Judicial Education; (6) Study Committees on Complex Litigation; (7) Study Committee on Juvenile Justice; and (8) the Committee on Strategic Planning, created by the Court in 2012. The annual meeting of the Judicial Conference convened on October 25, 2012, to consider the committees' reports and recommendations. This Annual Report summarizes the initiatives undertaken by each committee during Conference Year 2012 and notes the anticipated projects and tasks the Conference Committees will undertake in 2013.

With the submission of this report to the General Assembly, the Supreme Court continues its commitment to the efficient administration of justice and the management of the courts, the careful stewardship of the resources provided for the operation of the courts, and the further development of plans and goals designed to assure that the Illinois judicial branch provides justice to our citizens and upholds the rule of law.

I respectfully submit the Illinois Supreme Court's 2012 Annual Report to the General Assembly.

Respectfully,



Thomas L. Kilbride
Chief Justice

2012 Illinois Judicial Conference

On October 25, 2012, the Illinois Judicial Conference convened its annual meeting in Chicago, Illinois. Article 6, section 17, of the Illinois Constitution mandates the Conference to consider the work of the courts and to suggest improvements in the administration of justice. Illinois Supreme Court Rule 41 implements this constitutional mandate by defining the duties and the membership of the Illinois Judicial Conference. Consistent with Rule 41, the Conference is composed of judges from every level of the judiciary and represents Illinois' five judicial districts. The Chief Justice of the Supreme Court of Illinois presides over the Conference, and the other Justices serve as members.

Eight appointed committees largely perform the work of the Judicial Conference throughout the year. These committees are the Alternative Dispute Resolution Coordinating Committee, Automation and Technology Committee, Study Committee on Complex Litigation, Committee on Criminal Law and Probation Administration, Committee on Discovery Procedures, Committee on Education, Study Committee on Juvenile Justice, and the recently added Committee on Strategic Planning. The committees' rosters include appellate, circuit, and associate judges who serve as members of the Judicial Conference. Their work is aided by judges, law professors, and attorneys appointed by the Supreme Court 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' activities.

As authorized in Supreme Court Rule 41, the Executive Committee acts on behalf of the Conference when it is not in session. The Executive Committee consists of fourteen judges, with six from the First Judicial District (Cook County) and two from each of judicial districts two, three, four and five. The Executive Committee previews the written reports of the Conference committees and submits an annual meeting agenda for the Supreme Court's approval.

The 2012 Annual Meeting of the Judicial Conference lasted only one day, minimizing the judges' time away from the bench and managing costs more effectively. Chief Justice Thomas L. Kilbride convened the meeting. In his opening remarks, Chief Justice Kilbride welcomed those in attendance and thanked them for their hard work during the Conference year. He also recognized the current members of the Supreme Court, as well as the retired Supreme Court Justices in attendance. Concluding his introductions, Chief Justice Kilbride recognized Michael J. Tardy, Director of the

Administrative Office of the Illinois Courts, and thanked the Director and his staff for their work in preparing for the Annual Meeting of the Conference.

Chief Justice Kilbride remarked that, even without a constitutional mandate, a similar gathering would arise due to Illinois judges' shared commitment to improving the administration of justice. Reflecting on the role of the courts, the Chief Justice challenged the Conference members to work toward the common goal of providing the state's citizens a fair and efficient judicial system. Chief Justice Kilbride also noted that good ideas do not exist only at the top of an organization but arise at all levels. With that premise in mind, Chief Justice Kilbride encouraged the judges, clerks, probation departments, the Administrative Office of the Illinois Courts, and all individuals of the court system to foster a culture that promotes the development of good ideas from all sources.

Chief Justice Kilbride announced that the Supreme Court issued new statewide standards and new and amended Supreme Court rules to allow all Illinois circuit courts to begin electronically filing court documents in civil cases. Concurrently, the new statewide e-filing principles and standards protect against identity theft and the disclosure of sensitive information. Chief Justice Kilbride commented that uniform standards allow all circuit courts to benefit from e-filing's greater efficiencies and long-range cost savings as well as provide a modern way of doing business. Chief Justice Kilbride expressed his hope that the Illinois judiciary would begin to implement e-business practices as quickly and efficiently as possible, stating that "the door is open for any circuit in any county around the state to implement e-filing" as long as the chief judge and circuit clerk agree they are ready.

Chief Justice Kilbride reminded the attendees that the Judicial Conference's purpose "to consider the work of the courts and to suggest improvements in the administration of justice" creates a framework for self-evaluation. As a forum for its members, the Conference offers an opportunity to examine existing judicial practices carefully and to recommend adjustments and improvements to the court system. The Conference should report on the current state of the judicial branch as well as outline plans for furthering an efficient and adaptive state judiciary. Committee charges and work should be open to all ideas that advance judicial principles and adapt the judiciary to meet changing demands.

In 2012, Chief Justice Kilbride also changed the format of the Conference's Annual Meeting. A nationally



renowned court consultant guided a new strategic planning process. Conference members were assigned to specific groups for comprehensive strategic planning about automation and technology, access to justice, case management and court performance, court funding and use of public resources, organizational structure and systems governance, civil justice, criminal justice, juvenile justice, and judicial education, performance, and conduct. On behalf of the Illinois Supreme Court, Chief Justice Kilbride asked Conference members to partner with them to develop a plan for the future of Illinois' justice system. In closing, Chief Justice Kilbride encouraged Conference members to continue to reflect on ways to enhance Illinois' courts because their work is the foundation for improving our justice system.

After the Chief Justice concluded his remarks, Conference committees met during the morning session to finalize committee reports and to initiate planning for Conference Year 2013. The morning plenary session included a presentation of each committee's activities in Conference Year 2012. The following narrative summarizes the written and oral substance of those reports.

Alternative Dispute Resolution Coordinating Committee

The Alternative Dispute Resolution Coordinating Committee monitors and assesses both court-annexed mandatory arbitration and mediation programs approved by the Supreme Court. Along with the Administrative Office of the Illinois Courts, the Committee continued to track mandatory arbitration statistics to determine program efficacy during the 2012 Conference Year. In conjunction with its charge to develop a statewide measure of the satisfaction of arbitration program participants, the Committee sent a survey and explanatory correspondence to all arbitration programs for circulation to participating arbitrators, attorneys, and litigants. The completed surveys were sent to the Administrative Office for data tabulation and synthesis. Among its findings, the survey revealed that participants in alternative dispute resolution proceedings are generally satisfied with the current arbitration system. A comprehensive report will be prepared for the Court.

The Committee next considered the perceptions of judges and attorneys on the assignment of cases to civil mediation. After initial discussion, the Committee concluded that two perceptions merited exploration: (1) parties were being forced into mediation even after rejecting the process as unfeasible; and (2) if the parties agreed to mediation but could not choose a mediator, trial judges were either appointing or strongly recommending particular mediators. After discussions with stakeholders, judges, and others, the Committee

concluded that the two perceptions were false. As a result, the Committee began to discuss how to enhance the perception of mediation in Illinois, considering a variety of approaches, from standardizing the mediation process to initiating a mandatory mediation program similar to the current mandatory arbitration system.

Finally, the Committee considered the development of a "train-the-trainer" curriculum along with the *Uniform Arbitrator Reference Manual* and Arbitrator Training Video. The Committee currently discusses the day-to-day operations of the various arbitration centers during annual meetings with the arbitration administrators. After extensive consideration, the Committee determined that the current method of training arbitrators in person remains the best approach and that a specific curriculum to "train-the-trainer" was unnecessary.

Automation and Technology Committee

During Conference Year 2012, the Automation and Technology Committee worked with the Special Supreme Court Committee on E-Business and a subcommittee from the Illinois Association of Court Clerks to review Illinois' e-business pilot projects and make recommendations for the judicial expansion of e-business. The Committee represented the judges' viewpoint on the development and use of e-business applications and technologies. The Committee and Special Committee actively participated in drafting a report for the Supreme Court's consideration that recommended proposed guidelines and policies for electronic filing, electronic access, and electronic court records. The Committee also assisted the E-Access Advisory Committee in developing guidelines and changes to the Electronic Access Policy for Circuit Court Records for presentation to the Supreme Court.

As a final matter, the Committee considered the role of technology in data acquisition, compilation, and use. The Committee recognized that, while technology offers many advantages in collecting and processing data for presentation and further use, computing systems require standard programming and defined data fields to produce accurate and usable information. Therefore, the Committee determined that, even with a uniform case management system, standards must be created to govern the use of the fields and information between counties.

Study Committee on Complex Litigation

During the 2012 Conference Year, the Committee focused its efforts on initiating several revisions and updates to the *Manual on Complex Criminal Litigation*. In Conference Year 2011, the Committee assigned a subcommittee to

review the Criminal Manual and determine what content should remain and what content should be stricken as duplicative of the Criminal Benchbook. As a result of the subcommittee's work, the Committee decided to remove several chapters and to add new chapters and content reflecting the pertinent procedural issues faced by judges presiding over complex criminal litigation. Chapters were assigned individually to Committee members to review, edit, and revise, with the newly added chapters being assigned to Committee members with extensive experience in criminal law and procedure. During Conference Year 2012, drafts and revisions were well underway on several chapters, with the drafters focused on ensuring that content, forms, and links within the Criminal Manual were current and on point.

The Committee also published in print and CD-ROM formats the *Fourth Edition of the Manual on Complex Civil Litigation* and made them available to judges. The Committee has made it a priority to track changes in the law that would affect the accuracy and timeliness of the information, links, and forms contained within the Civil Manual and to identify necessary revisions.

Committee on Criminal Law and Probation Administration

Over the course of Conference Year 2012, the Committee continued to work toward updating the 2007 Specialty Court Survey. With the Administrative Office of the Illinois Courts, the Committee developed an initial assessment tool to determine the nature and extent of problem-solving courts in each judicial circuit, receiving responses from each circuit. After analyzing the responses, the Committee and the Administrative Office of the Illinois Courts created a detailed survey instrument capable of providing the Conference with a more comprehensive overview of Illinois specialty courts. The detailed survey was emailed to the Trial Court Administrators for data collection.

The Committee also considered a proposed amendment to Supreme Court Rule 402 authorizing a defendant, with the permission of the court and the prosecution, to enter a guilty plea conditioned on an appellate review of an adverse ruling on a pretrial motion to suppress. This proposed amendment is drawn directly from Federal Rule of Criminal Procedure 11 and is commonly known as a "conditional plea." A subcommittee was formed to examine this proposed amendment. After discussion, a consensus determined that stakeholder input was required due to members' minimal contact with conditional pleas because they existed only in the federal system. The subcommittee is currently seeking input from the Illinois State's Attorneys Association, the Illinois Public Defender Association, including appellate defenders, and the Criminal Justice Section of the Illinois

State Bar Association. Once the stakeholders' input is received, the Committee will discuss this amendment further and report back to the Conference.

The Committee also discussed the possible effect of *People v. Rippatoe*, 408 Ill. App. 3d 1061 (3rd Dist. 2011) on Supreme Court Rule 430 (Trial of Incarcerated Defendant). In *Rippatoe*, the Third District Appellate Court held that defendant's rights were denied because he was kept in restraints during a post trial proceeding without conducting a hearing on whether the restraints were necessary, as required by *People v. Boose*, 66 Ill. 2d 261 (1977), and *People v. Allen*, 222 Ill. 2d 340 (2006). In 2010, the Court adopted Rule 430 on the Committee's recommendation, codifying the *Boose* and *Allen* decisions governing the use of restraints. Prior to the drafting of Rule 430, the Committee concluded that *Boose* and *Allen* were applicable only to the guilt-innocence phase of a criminal proceeding. As a result, the Committee discussed the *Rippatoe* decision, along with the *Boose* and *Allen* cases. The Committee again reached a consensus that the *Boose* and *Allen* rulings on whether or not to place a defendant in restraints apply only to the guilt-innocence phase of the proceedings, resulting in a conflict between the holding in *Rippatoe* and those in *Boose* and *Allen*. In the absence of a Supreme Court opinion expanding the *Boose* and *Allen* opinions to include post trial proceedings, the Committee does not recommend an amendment to Rule 430 to incorporate the *Rippatoe* decision at this time.

Finally, the Committee considered the reliability of the Illinois trial courts' current method to determine the admissibility of eyewitness testimony. The Committee addressed this charge by examining multiple judicial opinions from Illinois and other states, United States Supreme Court opinions, and scientific treatises addressing the reliability of eyewitness testimony. After a thorough discussion, the Committee reached a consensus that Illinois law provides adequate guidance to trial courts on determining the reliability of eyewitness testimony.

Committee on Discovery Procedures

During Conference Year 2012, the Committee considered two proposals forwarded from the Supreme Court Rules Committee. First, the Committee considered concerns raised by an attorney about a conflict within Rule 216 (Admission of Fact or of Genuineness of Documents) over the time to respond to record requests (14 or 28 days) depending on whether the document is a public record. The Committee determined that a different time frame is not required for public records. Therefore, the Committee proposed amending Rule 216(d) to incorporate a 28-day time frame. Next, the Committee considered correspondence from the Illinois Association



of Defense Trial Counsel regarding its prior proposal to amend Rule 204(c) (Compelling Appearance of Deponent) to limit the fee that physicians may charge for giving deposition testimony to \$400 per hour. The Committee decided to continue to reject the proposed amendment because trial courts have the authority under Rule 204 to apportion deposition fees for doctors if necessary.

During the 2012 Conference Year, the Committee primarily focused on the issue of e-discovery. After surveying other state and federal discovery rules, examining case law, and discussing articles on electronic discovery, the Committee determined that some current discovery rules be amended to address three key issues: (1) altering the scope of electronic discovery to include and define electronically stored information (ESI); (2) cost allocation or proportionality to permit the trial court to examine the likely burden or expense of producing certain ESI; and (3) the use of pretrial conferences to require early discussion of any issues about the production of ESI. Finally, the Committee continues to debate the related issues of when the duty to preserve ESI arises and the potential sanctions for failure to preserve ESI. The Committee will next focus on drafting Committee Comments to accompany its proposed rule amendments.

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 2012, the Committee received two continuing charges: (1) develop and recommend a calendar of judicial education programs for new and experienced judges that reflect emerging legal, sociological, cultural, and technical issues that impact judicial decision making and court administration; and (2) evaluate judicial education programs continually. 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 comprising the annual Seminar Series, and the Advanced Judicial Academy.

Consistent with its overall charge, the Committee: completed the 2011 Illinois Judicial Benchbook projects; initiated 2012 Illinois Judicial Benchbook projects, including an ongoing dialogue with vendors about electronic access to benchbooks; delivered and evaluated the 2012 DUI/Traffic regional seminar and two presentations at Education Conference 2012; initiated the assessment of Education Conference 2012 evaluations, a task that will continue throughout the Education Conference 2014 planning process; and

initiated planning for Education Conference 2014 in addition to the spring 2013 Upholding Rights regional seminar, the 2013 DUI/Traffic seminar, the January 2013 New Judge Seminar, and the 2013 Advanced Judicial Academy.

Study Committee on Juvenile Justice

During Conference Year 2012, the Committee updated Volume II of the *Illinois Juvenile Law Benchbook* that addresses juvenile court proceedings involving allegations of abused, neglected, and dependent minors. The Committee reasonably anticipates that an update to Volume II will be available for the New Judge Seminar in January 2013.

The Committee also continued its study of disproportionate minority representation in juvenile justice and abuse and neglect cases. After examining various resources, the Committee suggested changes in the areas of data collection, judicial training, judicial tenure, and legislation to assist in addressing the issue. Specifically, the Committee recommends that the Court require the collection and reporting of the race and ethnicity of all juveniles in juvenile abuse and neglect, juvenile delinquency, and all other juvenile cases filed in the trial court. Second, the Committee recommends that the Court require that judges who hear juvenile abuse and neglect, delinquency, and other juvenile cases, receive training on disproportionate minority representation, evidence-based practices in juvenile court, and cultural competency by incorporating these topics as a part of the biennial Education Conferences and New Judge Seminars. Next, the Committee recommends that judges be assigned to juvenile court for significant time periods. Finally, the Committee recommends that the Court encourage the legislature to amend certain provisions of the Juvenile Court Act and the Sex Offender Registration Act as specified by the Committee.

Committee on Strategic Planning

During last year's Annual Meeting of the Judicial Conference, Chief Justice Kilbride expressed his interest in crafting a more sustainable, robust Conference, as well as in developing a *Future of the Courts Conference* to guide activities for improving judicial administration and promoting public trust and confidence in the Illinois judicial system. To achieve this goal, on October 11, 2012, Chief Justice Kilbride and the Illinois Supreme Court announced the creation of the Committee on Strategic Planning, an organized, long-range planning committee to prepare Illinois courts better for economic, technological, scientific, and social changes. The Committee on Strategic Planning became the eighth committee of the Illinois Judicial Conference. It is currently composed of judges and lawyers and will later include other justice system stakeholders. The Committee is

Conclusion

charged with identifying emerging trends and issues that may impact the courts and the delivery of justice and with proposing specific strategies and tactics to address them. As envisioned, the Committee on Strategic Planning achieves its mission by working with the Illinois Judicial Conference committees when appropriate. The Committee intends to elicit participation from a wide range of court stakeholders, including representatives of the state's attorneys, public defenders, county boards, and the legislative and executive branches. One of the Committee's initial goals is to hold a *Future of the Courts Conference* in Spring 2013, focusing on how to prepare courts for the future.

As evidenced by these Committee overviews, the scope of the work undertaken by the Judicial Conference in 2012 was broad, ranging from consideration of amendments to various Supreme Court Rules and updating manuals and benchbooks to the education and training of both new and experienced judges. Although many projects and initiatives were completed in Conference Year 2012, some will continue into Conference Year 2013, and additional projects will be assigned for the coming year. Thus, the work of the Judicial Conference will continue to honor its constitutional mandate and remain steadfast in its goal of improving the administration of justice in Illinois.



Supreme Court Decisions Which the General Assembly May Wish to Consider

Juvenile Court Act - Registration as a Sex Offender

In re S.B., Supreme Court Docket No. 112204
(October 4, 2012)

This case involved a minor charged with a sex offense who had been found “not not guilty” after a discharge hearing under section 104-25(a) of the Code of Criminal Procedure (725 ILCS 5/104-25(a)). The Court considered, as a matter of first impression, whether discharge hearings are applicable in juvenile proceedings. In its analysis, the Court noted that, although the Juvenile Court Act (705 ILCS 405/1-1 *et seq.*) does not contain its own provisions addressing a minor's fitness or procedures to follow in the event a minor is found unfit to stand trial, section 5-101(3) of the Juvenile Court Act (705 ILCS 405/5-101(3)) states that “[i]n all procedures under this Article, minors shall have all the procedural rights of adults in criminal proceedings, unless specifically precluded by laws that enhance the protection of such minors.” Concluding that discharge

hearings exist to safeguard the due process rights of defendants, the Court held that section 104-25(a) is incorporated into the Juvenile Court Act and, therefore, the circuit court's finding of “not not guilty” was not void. The Court also considered the minor's argument that he should not be required to register as a sex offender because section 3-5 of the Sex Offender Registration Act (SORA) (730 ILCS 150/3-5) only refers to juveniles “adjudicated delinquent.” The Court rejected this argument, holding that the incorporation of discharge hearings into the Juvenile Court Act, coupled with the conclusion that the minor was “not not guilty”, subjected him to the registration requirements in section 2(A)(1)(d) of the SORA (730 ILCS 150/3-5). The Court further held that the language in section 3-5 of the SORA, allowing for petition for removal from the sex offender registry, included juveniles for whom a finding of “not not guilty” has been entered following a discharge hearing. *Reversed and remanded.*