

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

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I. STATEMENT ON COMMITTEE CONTINUATION

The purpose of the Study Committee on Complex Litigation is to study, make recommendations on, and disseminate information regarding successful practices for managing complex litigation in the Illinois courts. So far, the Committee has concentrated its attention on completing the *Illinois Manual for Complex Civil Litigation* and the *Illinois Manual for Complex Criminal Litigation* and producing annual updates and supplements for the manuals. It has also considered changes in court rules and practices that could improve the administration of justice in complex cases.

The rapidly changing nature of the law and practice regarding complex litigation requires continual updating of the manuals. The supplements help fill out the manuals with current information on the many subjects that judges confront in complex cases. The supplements to the civil manual include the topics of civil conspiracy; complex insurance coverage litigation; environmental cases; complex employment, consumer, and antitrust litigation; joint and several liability and contribution; damages and attorneys' fees; discovery; joint and several liability; and class actions. The criminal manual has been supplemented with a new chapter on complex post-conviction review proceedings and another on sentencing. It also contains a supplemental note covering issues under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), jury selection and *voir dire*, additional sentencing issues, double jeopardy, prosecutorial conduct, and inconsistent verdicts.

The manuals are not the only work of the Committee. The Committee is also in a unique position to make recommendations for changes in rules and practices that affect complex civil and criminal cases. The Committee brings together judges from all over the state who have significant experience with trial and appeal of complex litigation. They can bring that experience to bear in considering proposals for facilitating the handling of those cases in our courts.

The members of the Committee believe that the ongoing work of updating and supplementing the manuals contributes to the mission of the Conference. They further believe that the Committee serves a valuable function in developing proposals for the conduct of complex cases. Therefore, the Committee requests that it be continued as a full standing committee of the Illinois Judicial Conference.

II. SUMMARY OF COMMITTEE ACTIVITIES

1. Civil Manual. During the past Conference year, the Committee updated the *Illinois Manual for Complex Civil Litigation* with a sixteen-page cumulative list of manual pages affected by recent developments.

The civil manual first appeared in 1991; the Committee produced comprehensively revised editions in 1994 and 1997. 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 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.

The 2004 cumulative update discusses such important cases as the Supreme Court's decisions in **Weiss v. Waterhouse Securities, Inc.**, 208 Ill. 2d 439, 804 N.E.2d 536 (2004), regarding pleading and class certification decisions in class actions; **Dawdy v. Union Pac. R.R. Co.**, 207 Ill. 2d 167, 797 N.E.2d 687 (2003), on forum non conveniens; **Fritz v. Johnston**, 209 Ill. 2d 302, 807 N.E.2d 461 (2004), on civil conspiracy; **Bajwa v. Metropolitan Life Insurance Co.**, 208 Ill. 2d 414, 804 N.E.2d 519 (2004), on negligent issuance of a life insurance policy; **Van Meter v. Darien Park Dist.**, 207 Ill. 2d 359, 799 N.E.2d 273 (2003), on discretionary-act municipal immunity; **Shannon v. Boise Cascade Corp.**, 208 Ill. 2d 517, 805 N.E.2d 213 (2004), on proximate causation in consumer fraud; **Borowiec v. Gateway 2000, Inc.**, 209 Ill. 2d 376, 808 N.E.2d 957 (2004), on the Magnuson-Moss Act and compelled arbitration of consumer fraud claims; and **Board of Trustees v. Coopers & Lybrand**, 208 Ill. 2d 259, 803 N.E.2d 460 (2003), on the audit-interference doctrine and setoffs for settlements.

2. Criminal Manual. This year, the Committee updated the *Illinois Manual for Complex Criminal Litigation* with a twenty-page cumulative list of manual pages affected by recent developments. The first edition of the criminal manual 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.

The 2004 update to the manual discusses, among other developments, the Supreme Court's decisions **People v. Morales**, 209 Ill. 2d 340, 808 N.E.2d 510 (2004), and **People v. Ortega**, 209 Ill. 2d 354, 808 N.E.2d 496 (2004), regarding attorney conflicts of interest; **People v. Stroud**, 208 Ill. 2d 398, 804 N.E.2d 510 (2004), concerning guilty pleas; **People v. Flowers**, 208 Ill. 2d 291, 802 N.E.2d 1174 (2004), on timely withdrawal of guilty pleas; **People v. Kaczmarek**, 207 Ill. 2d 288, 798 N.E.2d 713 (2003), on speedy trial; **People v. Phelps**, 211 Ill. 2d 1, 809 N.E.2d 1214 (2004), and **People v. Moss**, 206 Ill. 2d 503, 795 N.E.2d 208 (2003), on sentencing; **People v. Blue**, 207 Ill. 2d 542, 802 N.E.2d 208 (2003), on double jeopardy; **People v. Jones**, 207 Ill. 2d 122, 797 N.E.2d 640 (2003), and **People v. McCoy**, 207 Ill. 2d 352, 799 N.E.2d 269 (2003), on inconsistent verdicts; **People v. Johnson**, 208 Ill. 2d 53, 803

N.E.2d 405 (2004), on prosecutorial conduct; and *People v. Jones*, 211 Ill. 2d 140, 809 N.E.2d 1233 (2004), *People v. Thompson*, 209 Ill. 2d 19, 805 N.E.2d 1200 (2004), *People v. Pinkonsly*, 207 Ill. 2d 555, 802 N.E.2d 236 (2003), *People v. Shum*, 207 Ill. 2d 47, 797 N.E.2d 609 (2003), *People v. Williams*, 209 Ill. 2d 227, 807 N.E.2d 448 (2004), and *People v. Rissley*, 206 N.E.2d 403, 795 N.E.2d 174 (2003), on post-conviction review.

The revision to the manual features extensive treatment of *Apprendi* issues, discussing the Illinois Supreme Court's decisions in *People v. Kaczmarek*, 207 Ill. 2d 288, 798 N.E.2d 713 (2003); *People v. Thurow*, 203 Ill. 2d 352, 786 N.E.2d 1019 (2003), and *People v. Townsell*, 209 Ill. 2d 543, 809 N.E.2d 103 (2004), and the United States Supreme Court's decisions in *Blakely v. Washington*, 124 S. Ct. 2531 (2004), and *Schiro v. Summerlin*, 124 S. Ct. 2519 (2004). The criminal manual also takes up the United States Supreme Court's decision *Illinois v. Fisher*, 124 S. Ct. 1200 (2004), regarding the consequences of destruction of evidence.

3. Other Activities.

a) Identification Of Potentially Overlapping Complex Civil Cases

This Conference year, the Committee continued its work of last year concerning problems of overlapping complex civil cases, particularly class actions, in which closely related cases are filed in different forums in the state but are never consolidated or otherwise handled in an economical manner because of lack of information about the overlap. After considerable discussion, the Committee drafted and voted to forward to the Supreme Court's Rules Committee a proposed rule which would supplement S.C.R. 384 and increase the efficiency in the management of these cases by requiring litigants to disclose closely related litigation of which they are aware.

b) Assessment Of The Utility Of The Complex Litigation Manuals.

The present editions of both the Civil and Criminal Complex Litigations Manuals were published in 1997. They have been updated through the distribution of supplements on an annual basis. To some extent materials have been added, especially in the criminal manual which, although likely to be useful to trial judges, may not be specifically germane to complex cases. The Committee engaged in extensive discussions regarding the organization of the manuals, as well as their content. To assist its efforts, the Committee conducted a survey of the entire state judiciary (907 in number), in order to assess awareness of the manuals as well as views regarding their usefulness. Responses were received from 215 judges. The results indicated that 35% of the respondents were unaware of the civil manual and 58% were unaware of the criminal manual.

Desired results of the survey were requests for 136 copies of one or both of the manuals and requests for the CD versions from 91 judges. Responses to questions testing the frequency of use and views regarding utility all fell within the mid-range of values. This would seem to suggest a generally neutral view of the materials and their utility. This information should be useful to the Committee in future years in considering both the form and content of the manuals.

Hon. Stephen A. Schiller served as chair of the Committee since this year.

III. PROPOSED COMMITTEE ACTIVITIES FOR THE NEXT CONFERENCE YEAR

During the next Conference year, the Committee plans to monitor and evaluate caselaw, rule changes, and legislation, and to draft updates and supplements to keep the *Illinois Manual for Complex Civil Litigation* and the *Illinois Manual for Complex Criminal Litigation* current. The Committee further expects that it will be continuing its work on recommended treatment of overlapping complex civil cases. Finally, the Committee hopes to continue exploring how the manuals can best be revised and disseminated to best serve Illinois judges.

IV. RECOMMENDATIONS

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

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