

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

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I. STATEMENT ON COMMITTEE CONTINUATION

The mission 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. The major work of the Committee has been the completion of the *Illinois Manual for Complex Civil Litigation* and the *Illinois Manual for Complex Criminal Litigation* and the production of annual updates and subject-matter specific supplements for the manuals.

The rapid change in the law and practice regarding civil and criminal complex litigation necessitates the updates for the manuals. The subject-matter supplements fill out the manuals with current information on the ever-expanding range of subjects that judges run up against 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. The Committee believes that the ongoing work of updating and supplementing the manuals contributes to the mission of the Conference. 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 fourteen-page cumulative list of manual pages affected by recent developments. The Committee also drafted new chapters for the manual embracing the topics of discovery of business records, joint and several liability, and class actions.

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 the 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 2003 cumulative update discusses such important cases as the Supreme Court's decisions in *Johnson v. United Airlines*, 203 Ill. 2d 121 (2003), regarding the interpretation of the Contribution Act; in *Unzicker v. Kraft Food Ingredients Corp.*, 203 Ill. 2d 64 (2003), regarding the apportioning of several liability for nonmedical damages; and in *Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134 (2002), regarding causation and liability under the Consumer Fraud and Deceptive Business Practices Act. It alerts judges to legislative developments at the federal level concerning expanded district court jurisdiction under the Multiparty, Multiforum Trial Jurisdiction Act of 2002,

and to Illinois Supreme Court rule developments regarding interlocutory appeals in class actions.

The new chapter on Discovery of Business Records, Joint and Several Liability, and Class Action Issues takes up the discovery of computerized business archives, as well as the use of centralized document depositories. The chapter goes on to consider the problem of insuring completeness of production, the issues relating to retrieval of information from computer drives, and the discovery of e-mails. The materials on joint and several liability discuss *Unzicker* and *Johnson* in detail. In the class actions section, the chapter deals with interlocutory appeals issues, problems of overlapping class actions, federal-state judicial interaction in class cases, and alternatives to class action proceedings.

2. Criminal Manual. This year, the Committee updated the *Illinois Manual for Complex Criminal Litigation* with a fifteen-page cumulative list of manual pages affected by recent developments. The Committee also drafted a new chapter on sentencing. 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 2003 update to the manual discusses, among other developments, *People v. Williams*, 204 Ill. 2d 191 (2003), concerning speedy trial, *People v. Jackson*, 202 Ill. 2d 361 (2002), concerning polygraph evidence, and *People v. Peebles*, No. 83783, 2002 WL 1340876 (Ill. June 20, 2002), *cert. denied*, 123 S. Ct. 1355 (2003), concerning post-conviction review on issues having to do with proximity of deputy sheriffs to defendant at trial. It also discusses the Supreme Court's recent decision establishing that *Apprendi v. New Jersey*, 530 U.S. 466 (2000), does not apply to cases in which the direct appeal process had already concluded at the time *Apprendi* was decided. *People v. De La Paz*, No. 93208, 2003 WL 21493707 (Ill. May 8, 2003).

The criminal manual's new chapter on sentencing issues discusses consecutive and concurrent sentencing under the statutes and the interpretation in *People v. Harris*, 203 Ill. 2d 111 (2003). It also considers in some depth the practicalities of conducting sentencing hearings in complex criminal cases.

Hon. Clyde L. Kuehn has served as chair of the Committee since January 14, 2002.

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 conducted extensive discussion of class action issues during the course of the Conference year, and expects to continue to develop ideas relating to that topic.

IV. RECOMMENDATIONS

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