

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

Hon. Carolyn Quinn, Chair

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Hon. Thomas E. Hoffman

Hon. Joan E. Powell  
Mr. William R. Quinlan, Sr., Esq.  
Hon. Christopher C. Starck  
Hon. Thaddeus L. Wilson

Professor Martha A. Pagliari

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## I. STATEMENT ON COMMITTEE CONTINUATION

The purpose of the Illinois Judicial Conference Study Committee on Complex Litigation is to make recommendations, through proposed rules or other procedures, to reduce the cost and delay typically associated with protracted civil and criminal trials often involving multiple parties, multiple issues, and/or unique substantive or procedural considerations. Historically, the Study Committee's work was primarily focused on providing yearly updates to its Manual for Complex Litigation (Civil and Criminal). In that regard, the Study Committee was charged with preparing revisions, updates and new topics, as necessary, for the Manual for Complex Litigation, including the maintenance of forms accurate to the Manual Appendices. During the past few Judicial Conference years, the Study Committee members also have, at the Supreme Court's request, researched and offered proposed rules, policies and procedures recommended to improve the administration of justice in complex litigation cases. The Study Committee members generally have included Illinois circuit court and appellate court judges statewide who possess significant civil and/or criminal complex litigation experience.

For **Conference Year 2011**, the Supreme Court's charge to the Study Committee contained two continued projects/priorities from Conference Year 2010. First, the Study Committee was asked to draft the Fourth Edition of the Civil Manual, a project that was initiated during Conference Year 2009. Second, the Study Committee was asked to review the IJC Committee on Education 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 also had been carried over from Conference 2009, as the Committee awaited completion of the COE Criminal Law and Procedure Benchbook. Last, the members were asked to complete such other projects or initiatives that would be consistent with its charge.

The Study Committee believes that its work continues to be of great value to the mission of the Conference. Specifically, completion of the new edition of the Civil Manual, and the significant revisions identified and contemplated for the Criminal Manual, will be critical to providing unique references 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 its work on the Civil and Criminal Manuals.

## II. SUMMARY OF COMMITTEE ACTIVITIES

The following offers a brief summary of the Study Committee's work on those projects/priorities carried over from Conference Year 2010 and undertaken in Conference Year 2011.

**A. Conference Year 2010 Continued Projects/Priorities****1. Draft a 4<sup>th</sup> Edition of the Civil Manual**

During Conference Year 2011, the Study Committee largely focused on drafting the remaining chapters of the new Fourth Edition of the Civil Manual. In discussions during prior Conference years, the Committee had agreed that the new Civil Manual should fulfill its original intended purpose as a “how-to” guide for judges who may, or may not, regularly preside over complex litigation, or who may find that a fairly straightforward case has become complex and protracted. To best achieve this goal, the Study Committee agreed to compile a more practical guide to complex litigation, offering an overview of general issues in the first chapters, such as discovery, settlement and trial, then narrowing the focus in later chapters to more specialized issues, such as class actions, mass torts, and complex insurance coverage disputes.

The Study Committee continued the drafting process it had initiated during the prior Conference years. Briefly, after the various topics were assigned to the Committee members, a draft outline was created and approved by the full Committee. The Professor/Reporter then began drafting the text for each chapter, starting with the general topics. Upon completion, the draft chapter or section was forwarded to the Committee member assigned to that topic for review and comment. The full Committee discussed the final draft at the next meeting. The Professor/Reporter made the requested revisions, if any, and the Committee voted for final approval of the text at a subsequent meeting.

Similar to the approach undertaken by the Committee on Education Benchbook Project, the Study Committee members adopted various strategies for structuring the Fourth Edition which are intended to enable a judge to locate and reference information quickly. During Conference Year 2010, the Committee members agreed to include form orders in the Fourth Edition, which may be copied or downloaded from the CD-ROM 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 had become cumbersome and unwieldy. As a new feature of the Fourth Edition, each chapter will conclude with a checklist for the judge’s quick reference on a particular topic. As part of this comprehensive effort to make the Civil Manual more streamlined and user friendly, the Fourth Edition chapters will contain far fewer footnotes than the current Third Edition.

**Chapter 1 Pretrial Procedures in Complex Litigation** was completed in Conference Year 2009, with final editing and approval in the current Conference year. This chapter

conflates all of the most useful and relevant information currently contained in Chapters 1, 2 and 3 of the Third Edition. **Chapter 2 Discovery in Complex Litigation** was initiated in Conference Years 2009 and 2010 and given final approval during the current Conference year. It covers complex discovery management techniques, privilege claims and protective orders, discovery of electronic business records, and production of documents from non-parties.

During Conference Year 2011, the Study Committee gave final review and approval to the remaining chapters comprising the Fourth Edition. **Chapter 3 Sanctions and Other Enforcement Techniques** will cover a court's authority to impose sanctions, Rule 137 petitions, sanctions for discovery violations and voluntary dismissals. **Chapter 4 Settlement Procedures in Complex Litigation** covers issues such as timing of settlement discussions, ethical issues, enforcement, and settlements in specific cases such as mass injury actions. **Chapter 5 Alternative Dispute Resolution in Complex Litigation** will explain the different types of court-annexed ADR, discuss initiation of the ADR process, managing a complex case during the ADR process and using ADR in specific types of complex cases. **Chapter 6 Final Pretrial Conferences in Complex Cases** includes text on trial format, motions *in limine* and exclusion of evidence, Rule 237 requests to produce, proposed jury questions, voir dire, and verdict forms. **Chapter 7 Trial Techniques in Complex Litigation** covers conduct of the trial, jury trials, nonjury trials, multiparty issues, trial settlements, and the Moorman Doctrine. **Chapter 8 Cases with Parallel Proceedings** provides guidance on cases with parallel criminal proceedings, cases with parallel proceedings in other states, and cases with parallel federal proceedings. Last, **Chapter 9 Special Problems and Miscellaneous Subjects Common in Complex Litigation** discusses class actions, mass tort cases, insurance coverage disputes, and mechanics liens, environmental litigation, employment disputes, antitrust, and civil conspiracy.

As of the drafting of this report, the Committee has completed its final review and voted to approve the entire text of the Fourth Edition. With final review and formatting to be completed over the summer, the Study Committee anticipates that the Fourth Edition of the Civil Manual will be available for circulation to Illinois judges in Fall 2011, both in hard copy and CD-ROM format which affords users the convenience of downloading and hyperlink and search capabilities.

In previous years, the Committee charge contemplated annual revisions and updates to both the Civil and Criminal Manuals, as well as review of the forms contained in the appendices to both manuals. In light of the fact that the Committee has drafted a new edition of the Civil Manual and initiated significant revisions to the Criminal Manual which will continue during the

next Conference year, no new Civil or Criminal updates were created during Conference Year 2011.

The current edition of the Criminal Manual is available in CD-ROM format.

**2. 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 continued from Conference Years 2009 and 2010, the Committee was requested to review the Criminal Law and Procedure Benchbook created by the IJC Committee on Education and consider appropriate revisions to the Criminal Manual. This project had been continued while the Study Committee awaited completion of the Criminal Law and Procedure Benchbook. After the benchbook was completed at the end of Conference Year 2009, the Study Committee members requested and received copies in the early part of Conference Year 2010.

During Conference Year 2010, the Study Committee reviewed and discussed the Criminal Benchbook in comparison to the Criminal Manual. The members noted that the benchbook was an excellent source of nuts and bolts information. The Study 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.

During Conference Year 2011, the Study Committee, which included a few new members with complex criminal litigation experience, was able to undertake more substantive work on the revisions to the Criminal Manual. At the first meeting in February, a criminal subcommittee was formed and assigned to this project. The subcommittee began by discussing the definition of a complex criminal case. The subcommittee then thoroughly reviewed and compared the Criminal Benchbook and Criminal Manual and reported to the full Committee on the extent of overlap between the resources and the recommended content of the Criminal Manual as a result of this review. The criminal subcommittee also consulted with the Hon. Scott Shore, Chair of the Committee on Education benchbook committee for the Criminal Law Benchbook. Discussions with Judge Shore informed and assisted the subcommittee's efforts to distill the information which will remain in the Criminal Manual and identify the text which will be removed as duplicative of the Criminal Benchbook. The subcommittee drafted a detailed table of contents for the revised Criminal Manual which was approved by the full Study Committee. The subcommittee anticipates that approximately 50% of the revised Criminal Manual will be new text providing more comprehensive information on topics such as dealing with high profile cases and the concomitant media and security issues

that inevitably arise. The criminal subcommittee continues to “flesh out” the outline and assign chapters of the Criminal Manual to the Committee members.

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

During the next Conference year, the Study Committee’s Fourth Edition of the Civil Manual will be available for circulation to all interested Illinois judges. The Study Committee will track new cases, rules, statutes and other information which will be considered for future updates or supplements to the Civil Manual.

The Committee also will continue with comprehensive review and revision of the Criminal Manual. Revisions to the Criminal Manual will likely comprise the bulk of the Committee’s work for Conference Year 2012. The Criminal Manual is anticipated to be similar in style to the Fourth Edition of the Civil Manual; specifically, the text will be more streamlined, with far fewer footnotes, and will include downloadable form orders and topic checklists for each chapter.

### **IV. RECOMMENDATIONS**

The Committee makes no recommendations to the Conference at this time.