

**ANNUAL REPORT
OF THE
COMMITTEE ON CRIMINAL
LAW AND PROBATION ADMINISTRATION
TO THE ILLINOIS JUDICIAL CONFERENCE**

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October 2011

I. STATEMENT ON COMMITTEE CONTINUATION

The purpose of the Criminal Law and Probation Administration Committee, (Committee), of the Illinois Judicial Conference is to review and make recommendations on matters affecting the administration of criminal law and monitor, evaluate and provide recommendations on issues affecting the probation system. The Committee is further charged to review, analyze and examine new issues arising out of legislation and case law that impact criminal law and procedures and probation resources and operations. The Committee also is charged with reviewing and commenting on changes to Illinois Supreme Court Rules that affect the administration of criminal law and/or the probation system.

Since the Committee's inception, a number of critical issues related to criminal law and probation administration have been addressed. Over the years his Committee has been instrumental in sponsoring amendments to Supreme Court rules which were then adopted by the Supreme Court, including Rule 605(a) and Rule 605(b). The Committee has made recommendations for the enacting of new rules, specifically Rule 402A and Rule 430, both of which were adopted by the Court. The Committee also has made recommendations on the use of videoconferencing technology in criminal cases. The Committee also has prepared and presented to the Conference a pre-sentence investigation report format incorporating the principles of Evidence Based Practices, (EBP), as well as a one page EBP bench guide and a similar one created for use by probation officers, supervisors, and managers.

This Conference year, as a prelude to updating the 2007 Specialty Court Survey, the Committee approved an initial assessment to be sent to Chief Judges and Trial Court Administrators to ascertain the nature and extent of problem solving courts in each judicial circuit. Furthermore, at the request of the Supreme Court Rules Committee, the Committee made recommendations concerning proposed amendments to Supreme Court Rules 402(d), 604(d), 651(c) and 431(b).

The Committee is dedicated to serving the Court in meeting the assigned projects and priorities, and producing quality information and product. The Committee is requesting to continue addressing matters affecting criminal law and procedure and the administration of probation services.

II. SUMMARY OF COMMITTEE ACTIVITIES

Conference Year 2010 Continued Projects/Priorities

Project 1: Update the 2007 Specialty Court Survey.

In 2010, the Committee began to undertake updating the 2007 Specialty Court Survey by examining and discussing problem solving courts designed to address issues unique to veterans. The Hon. John Kirby, presiding Judge of the Cook County Veterans Court program and Mr. Mark Kammerer, Cook County Specialty Courts Coordinators spoke to the Committee about the Cook County Veterans Court Program. Judge Kirby and Mr. Kammerer detailed to the Committee the screening process used to determine participation eligibility, the tools used by the court to address veterans' issues, the resources used, and the success rate of the program.

Due to the in-depth nature of this charge, the Administrative Office of the Illinois Courts, in conjunction with the Committee, has developed an initial assessment for the purpose of determining the nature and extent of problem solving courts in each judicial circuit. This initial assessment has been sent to the Chief Judges and Trial Court Administrators for each judicial circuit. Once the responses contained in the initial assessment are analyzed, work will begin to develop a survey instrument that will be capable of providing the Conference with a more comprehensive overview of speciality courts in Illinois as compared to the 2007 survey.

Project 2: Study, examine and report on Supreme Court Rules as they relate to criminal procedure and court process.

The Supreme Court Rules Committee requested that the Committee comment on proposed amendments to paragraph (d) of the Supreme Court Rule 402, amendments to paragraph (d) of Supreme Court Rule 604, and amendment to paragraph (c) of Supreme Court Rule 651 and an amendment to paragraph (b) of Supreme Court Rule 431.

The proposed amendment to Supreme Court Rule 402(d)(1) would include language that would give the trial judge the discretion to participate in plea discussions upon request of the defendant. The Committee believed that the language of the proposed amendment was not adequate to guide a trial judge concerning his or her role in a Rule 401 plea discussion. As a result, a subcommittee was formed and charged by the Committee with drafting a proposed amendment to Rule 402, which addressed the Committee's concerns. The subcommittee's proposed amendment included allowing a trial judge to participate in a Rule 401 conference at

the request of either the prosecution or defense and also incorporated a litany of admonishments to the defendant prior to the initiation of a Rule 402 conference. The Committee approved the subcommittee's proposed amendments to Rule 402. The Committee's proposed amendments to Rule 402 have been forwarded to the Supreme Court Rules Committee.

There are two proposed amendments to Supreme Court Rule 604(d), which were reviewed and discussed by the Committee. The first proposed amendment would expand the type of consultations to include phone and electronic means, between a defendant and his/her attorney about defendant's contentions of error prior to filing an appeal from judgments entered as a result of a guilty plea.

The second proposed amendment to Rule 604(d) would expand the materials an attorney must certify as being reviewed before filing an appeal. Currently, Rule 604(d) is silent with respect to reviewing materials relevant to sentencing. The proposed amendment would require a defendant's attorney, who has filed a motion to reconsider sentence, to certify that he/she has examined not only the trial court proceedings but also the report of proceedings for the sentencing hearing.

After review and discussion of both proposed amendments to Rule 604(d), the Committee recommended that both amendments be adopted. The Committee recommended the first proposed amendment be adopted because it reflects the need to recognize and react to the ever expanding means of communications between individuals. The Committee recommended the second proposed amendment to Rule 604(d) be adopted because it addresses an omission in the rule and would now ensure an attorney has reviewed all relevant documents prior to filing an appeal from judgment entered on a plea of guilty. The Committee's recommendation has been forwarded to the Supreme Court Rules Committee.

Next, a proposed amendment to Supreme Court Rule 651(c) was reviewed and discussed by the Committee. This proposed amendment is similar to the first proposed amendment to Rule 604(d) in that it would expand the type of methodology of consultations with the defendant about any post-conviction proceeding to include communications by phone and electronic means. After review and discussion of this proposed amendment, the Committee recommended adoption of this proposed amendment because, like the first proposed amendment to Rule 604(d), it reflects the need to recognize and react to the ever expanding

means of communication between individuals. The Committee's recommendations has been forwarded to the Supreme Court Rules Committee.

Finally, the Committee reviewed a proposed amendment to Supreme Court Rule 43(b)(4), which outlines what is commonly known as the "Zehr" questions. Rule 431(b) currently states, in relevant part, that the defendant's failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects. The proposal amended paragraph (b) of Rule 431 to provide that the fact the defendant does not testify, cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects. The drafter explained that in his opinion the word "failure" as currently used in paragraph (b) unduly biased a jury against a defendant for exercising his or her right to not testify at trial and the proposed amendment would remove that potential for bias.

After further discussion of the proposed amendment to Rule 431(b), the Committee unanimously concurred that the proposed amendment was necessary and had no issue with the proposed wording. The Committee's recommendation has been forwarded to the Supreme Court Rules Committee.

III. PROPOSED COMMITTEE ACTIVITIES FOR THE NEXT CONFERENCE YEAR

While the Committee has made significant progress addressing its charges, much of the Committee's work is ongoing and developing. The Committee is requesting to continue its work in updating the 2007 Specialty Court Survey. The Committee also would like to continue reviewing and making recommendations on matters affecting the administration of criminal law and the probation system. The Committee also would like to continue to study, examine and report on proposed Supreme Court Rules as they relate to criminal procedure and court process.

For Conference Year 2012 the Committee requests that it be charged with examining what, if any, effect the decision in the case of *People v. Darrell Rippatoe*, 408 Ill. App.3d 1061 (2011), has on Supreme Court Rule 430 (Trial of Incarcerated Defendant) and to make any recommendation thereto.

IV. RECOMMENDATIONS

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