



SUPREME COURT OF ILLINOIS

CHAMBERS OF
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January 31, 2020

The Honorable Michael J. Madigan
Speaker of the House
House of Representatives
Springfield, IL 62706

The Honorable Don Harmon
President of the Senate
State Senate
Springfield, IL 62706

The Honorable Jim Durkin
Minority Leader
House of Representatives
Springfield, IL 62706

The Honorable William E. Brady
Minority Leader
State Senate
Springfield, IL 62706

Dear Legislative Leaders:

I am pleased to provide the Annual Report of the activities for the 2019 Illinois Judicial Conference as required by Article VI, Section 17, of the Illinois Constitution of 1970. In keeping with this Constitutional mandate, Illinois Supreme Court Rule 41 creates the Illinois Judicial Conference and charges the Conference with considering the work of the courts and suggesting improvements in the administration of justice.

Following the inaugural meeting of the new Illinois Judicial Conference (IJC) in November 2018, the IJC devoted most of 2019 to a strategic planning process that resulted in crafting mission and vision statements, and a set of core values for the judicial branch. The IJC also identified five strategic goals to be addressed in a three-year Strategic Agenda, together with strategies designed to achieve each of these strategic goals. On October 2, 2019, the IJC unveiled the Supreme Court's Strategic Agenda, which was developed by the IJC and approved by the Court. I am pleased to convey that the Strategic Agenda will serve as a guide for the future of the Illinois Judicial Branch as it begins the implementation phase in 2020. This report includes a detailed explanation of the IJC's work on developing the Strategic Agenda.

This report also includes a summary of several Supreme Court decisions from the past year that are offered for the General Assembly's consideration. In offering these cases, the Court is mindful of the distinct roles of the General Assembly and the Court. While we intend no intrusion upon

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the prerogatives of the General Assembly in the exercise of its authority, we do respectfully offer these cases for your consideration and look forward to the General Assembly's continued responsiveness and support.

On behalf of the Court, I respectfully submit the Supreme Court's Annual Report to the Legislative Leaders of the General Assembly on the 2019 Illinois Judicial Conference. This report is also available to the other members of the General Assembly on the Supreme Court's website at www.illinoiscourts.gov.

Respectfully,



Anne M. Burke
Chief Justice
Supreme Court of Illinois

Enclosure

c: Members of the General Assembly

Annual Report to the General Assembly on the 2019 Illinois Judicial Conference

Article VI, Section 17, of the Illinois Constitution mandates that the Illinois Supreme Court convene an annual Judicial 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 requirement by defining the duties and the membership of the Illinois Judicial Conference.

Prior to Conference Year 2018, the Court approved a plan to transition the existing Judicial Conference to a structure focused on long-term statewide strategic planning for the judicial branch. In the fall of 2018, the Court amended Supreme Court Rule 41 to reconstitute the Judicial Conference from its subject-matter committees to a smaller, active strategic planning and policy body that included judges and non-judges working in and with the judicial branch.

During Conference Year 2019, the newly reconstituted Judicial Conference was devoted to the development phase of a strategic planning initiative, culminating with the drafting of a Strategic Agenda for the Illinois Judicial Branch. The Judicial Conference convened three times during the conference year, including a multi-day session. The meetings were facilitated by Hon. S. Gene Schwarm, retired Illinois Appellate Court Justice, as well as Strategic Planning Project consultant, Dr. Brenda Wagenknecht-Ivy. The strategic planning process included drafting and administering a statewide survey gathering feedback and suggestions from judicial officers, judicial branch employees, justice partners, and external stakeholders to help shape the future direction, goals, and strategic priorities of the judicial branch. The responses to the survey indicated that the three biggest challenges/issues facing the court system in the next three years are (1) need for/access to treatment services, (2) limited funding and/or disparity of resources and (3) technology in the court system. In addition to the survey, the Judicial Conference reviewed internal and external trends affecting the judicial branch and assessed future implications of those trends. The Judicial Conference also engaged in an organizational “SWOT” assessment analyzing the strengths, weaknesses, opportunities, and threats for the judicial branch. After careful thought and much deliberation, the Judicial Conference crafted mission and vision statements and a set of core values (fairness, accountability, integrity and respect) for the judicial branch.

On October 2, 2019, the Strategic Agenda, which was developed by the Judicial Conference and approved by the Court, was unveiled. The Strategic Agenda identified five strategic goals to be addressed over the next three-years. The five strategic goals were identified as (1) accessible justice/equal protection under the law, (2) procedural fairness, timeliness and operational efficiency, (3) professionalism/accountability throughout the judicial branch, (4) understanding of/confidence in the judicial branch, and (5) sufficient funding/effective use of judicial branch resources. Each strategic goal included several strategic initiatives to be implemented and aimed at achieving each goal. Subsequent to the unveiling of the Strategic Agenda, it has been distributed to each Illinois judge, reviewing court and circuit clerk, trial court administrator and probation director in the state. Copies were also provided to each state legislator, members of the Conference of Chief Justices and Conference of State Court Administrators, the ISBA, the Dean at every Illinois law school, and executive directors at legal aid providers. Additionally, each Illinois chief judge was advised to contact the Administrative Office of the Illinois Courts if they wish to share a copy with local stakeholders (i.e. states

attorney's, public defenders, board members, etc.). For a wider audience, the Strategic Agenda is available on the Court's website.

Implementation of strategies to achieve each strategic goal will allow judicial officers and justice partners to come together to think beyond day-to-day problems. These discussions will be across myriad issues, including case management practices, the allocation and use of limited resources, improving and expanding on the collection of court data, sustaining internal and external cooperation and collaboration to improve the delivery of justice, and improving service to the public. Crucial next steps with the implementation phase of the Strategic Agenda was the assignment of 15 defined strategic initiatives to existing Supreme Court Commissions, Conference of Chief Circuit Judges or newly established Judicial Conference Task Forces. During the 2019 Conference Year, the Judicial Conference members engaged in thoughtful discussion regarding the assignment of initiatives to these various entities, as well as suggesting membership to the new Judicial Conference Task Forces.

The Supreme Court approved creating eight new Judicial Conference Task Forces with 10-12 judicial and non-judicial members to serve on these task forces. Each task force has a designated chair, vice-chair and staff from the Administrative Office of the Illinois Courts (AOIC), assigned as a member or support person. The Judicial Conference leadership convened all chairs, vice-chairs and AOIC staff serving on these various entities to further explain their charge and process. Following that meeting, it is anticipated that in Conference Year 2020 each entity will meet on a schedule determined by the chair and that each chair will report that entity's progress back to the Judicial Conference at the Judicial Conference meetings in 2020. Justice Schwarm (ret.), as Project Coordinator for the Judicial Conference Strategic Agenda, and Dr. Wagenknecht-Ivy, as Strategic Agenda Project Consultant, will continue to help guide the implementation process throughout Conference Year 2020.

As evidenced by the development of the Strategic Agenda for the judicial branch, the scope of work undertaken by the Judicial Conference will continue during the implementation phase. As such, 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 That the General Assembly May Wish to Consider

People v. Webb, People v. Greco, 2019 IL 122951 (March 21, 2019)

Defendants in two cases were charged with unlawful use of weapons (720 ILCS 5/24-1(a)(4)(West 2016)), which provides, in part, that it is unlawful for a person to possess or carry a stun gun or Taser in a vehicle or in public places. The circuit court held that this provision was unconstitutional under the Second Amendment. The Supreme Court affirmed that section 24-1(a)(4) was facially unconstitutional on the basis that section 24-1(a)(4) was a complete ban on carrying a stun gun or Taser in public and the Second Amendment applies to all bearable arms including stun guns and Tasers. In so holding, the Court noted that stun guns and Tasers do not fall under the Firearm Concealed Carry Act (430 ILCS 66/10) because a concealed carry license cannot be issued for a stun gun or Taser.

Wingert v. Hradisky, 2019 IL 123201 (March 21, 2019)

In this case, the minor son of a deceased father, whose death was caused by a drug overdose, sought damages against the estate of the deceased drug dealer who sold the son's father the illegal drugs by citing the Drug Dealer Liability Act (Act) (740 ILCS 57/25(b)(2)(West 2016)). Defendant filed a motion to dismiss on the grounds that the Act violates the due process clauses of both the federal and state constitutions by imposing an irrebuttable presumption of causation that has no rational connection between defendant's knowing participation in the illegal drug market and causation of the user's injuries. The trial court found section 25(b)(2) of the Act unconstitutional. The Supreme Court held section 25(b)(2) to be unconstitutional as it violates due process. The Court determined that the legislative purpose of the Act was legitimate but that the Act did not bear a reasonable relationship to the legislative purpose. Because section 25(b)(2) imposes liability on persons having no connection to or nexus with the drug use, it is unreasonable and arbitrary.

Piccioli v. The Board of Trustees of the Teachers' Retirement System et al., 2019 IL 122905 (April 4, 2019)

Plaintiff worked as a lobbyist for the Illinois Federation of Teachers for many years, worked for one day as a substitute teacher in 2007 after obtaining a substitute teaching certificate, and obtained a pension from the Teachers Retirement System (TRS). This pension was permissible as a result of the enactment of Public Act 94-1111, which allowed service credit in the TRS for union work prior to becoming a teacher. Plaintiff contributed nearly \$200,000 to the system for his union service and met the requirements for obtaining service credit in the TRS. However, following public criticism, Public Act 97-651 was enacted into law in 2012 and retroactively repealed the section that had allowed plaintiff service credit in the TRS. The Supreme Court held that the 2012 legislation was unconstitutional because it violated the pension protection clause in the Illinois Constitution, which prohibits reversing public pension benefits that were previously promised.

People v. Clark, 2019 IL 122891 (June 6, 2019)

Defendant successfully completed inpatient treatment, and her bond was modified to allow her to enter a halfway house, providing extended residential care following substance abuse treatment. The bond modification provided that if she was released or discharged from the halfway house for any reason, she was to immediately return to the custody of the jail. Defendant left the halfway house but did not report directly to the jail and her probation was revoked. After being sentenced to prison time on the underlying burglary and credit card convictions, the State also charged defendant with the offense of escape, pursuant to 720 ILCS 5/31-6(a)(West 2014) of the Criminal Code. At trial, defendant argued that her bail bond violation did not constitute escape. The trial court convicted her of escape. The appellate court reversed, finding that the failure to report did not constitute an escape because she was not in custody while on bond awaiting sentencing. The Supreme Court reversed the appellate court and affirmed the conviction. The Court determined that, by the statute's plain language, custody is not an element of escape by failing to report. The Court further determined that it was within the discretion of the prosecutor to charge defendant with escape rather than with violation of bond. As a final matter, the Court

encouraged the General Assembly to review and revise section 31-6(a) if the Court's construction was not as the legislature intended.

County of Will et al. v. The Pollution Control Board, 2019 IL 122798 (June 20, 2019)

At issue in this case is a 2010 amendment to the Illinois Environmental Protection Act (415 ILCS 5/1) (West 2010)), which directed the Pollution Control Board (the Board) to adopt rules for the use of clean construction or demolition debris (CCDD), as well as uncontaminated soil, as fill materials at clean construction or demolition debris fill operations. The legislation also stated that the rules must include “standards and procedures necessary to protect groundwater.” The Board ultimately required strong “front-end” testing and certain requirements for the debris and soil, but not “back-end” groundwater monitoring in the rules they promulgated and were challenged by the EPA and Will County. The appellate court affirmed the Board. The Supreme Court affirmed, rejecting the contention that not requiring groundwater monitoring was an arbitrary and capricious action by the Board. The Court reasoned that determining how best to provide and maintain a healthy environment in the State is the responsibility of the General Assembly and the Board. The Court encouraged the legislature to direct the Board to adopt a groundwater monitoring program for CCDD and uncontaminated soil fill sites if it believes the Board's requirements run counter to the mandate to protect groundwater.

Nichols v. Fahrenkamp, 2019 IL 123990 (June 20, 2019)

Plaintiff sued her mother over claims that parts of settlement funds received from a car accident plaintiff had been in as a minor were used for her mother's benefit. The trial court ruled in plaintiff's favor but found her mother not liable for the entire amount because the guardian *ad litem* that had been appointed at the time had approved the estimates and expenditures. Plaintiff brought a lawsuit against defendant, as guardian *ad litem* for plaintiff, alleging legal malpractice for those approvals, while defendant held that he was not liable for any negligence due to quasi-judicial immunity. The trial court ruled in favor of defendant and granted summary judgment in his favor. The appellate court reversed. The Supreme Court reversed the appellate court and affirmed the judgment of the circuit court. The Court held that court-appointed guardians *ad litem* are protected by quasi-judicial immunity provided that the functions actually performed are consistent with that of a witness and not an advocate. The Court also urged the General Assembly to consider reviewing the Probate Act and Marriage Act to ensure consistent use of the phrase “guardian *ad litem*”.

People v. Johnson, 2019 IL 123318 (August 1, 2019)

In this case, defendant was convicted of burglary in a Walmart store during store hours. On appeal, defendant challenged whether his act of shoplifting could be prosecuted as burglary as opposed to retail theft, arguing that the Supreme Court's recent decision in *People v. Bradford*, 2016 IL 118674 also extended to “unlawful-entry burglary” and precluded all shoplifting-as-burglary prosecutions. The appellate court reversed the conviction. The Supreme Court reversed the judgement of the appellate court, holding that the act of shoplifting could be prosecuted as burglary as opposed to retail theft. The Court relied on the legislative history surrounding the enactment of retail theft and concluded that it did not show any intent to do away with prosecution of shoplifting as unlawful-entry burglary.

People v. Morger, 2019 IL 123643 (November 21, 2019)

Defendant, who was convicted of aggravated criminal sexual abuse and criminal sexual abuse, was sentenced to four years' probation, including a prohibition against accessing social networking websites. Defendant challenged the probationary condition of section 5-6-3(a)(8.9) of the Unified Code of Corrections (730 ILCS 5/5-6-3(a)(8.9) (West 2016)), which placed on defendant a "complete ban on accessing social networking websites" as being unreasonable and unconstitutional under the First Amendment. The appellate court rejected this argument. The Supreme Court held that when deciding the propriety of a condition of probation, the overriding concern is reasonableness; where a constitutional right is involved, the condition must be narrowly drawn. The Court found that the complete ban from social media was not narrowly drawn, in part because the offense did not involve social media use, there were other conditions that served rehabilitative purposes, and the ban's protective value did not manifestly outweigh the probationer's constitutional rights. The Court therefore found section 5-6-3(a)(8.9) of the Code to be overbroad and unconstitutional.

Lakewood Nursing and Rehabilitation Center, LLC v. The Department of Public Health et al., 2019 IL 124019 (November 21, 2019)

In this case, a resident of the Lakewood Nursing and Rehabilitation Center was facing transfer or discharge over non-payment when the resident requested that the Department of Public Health (Department) hold a hearing. Section 3-411 of the Nursing Home Care Act (Act) (210 ILCS 45/3-411)(West 2012) states that the hearing "shall" be conducted "not later than 10 days" after the resident's request and requires that a decision be rendered within 14 days after the request. The circuit court interpreted section 3-411 as directory such that the Department did not violate the statutory time requirements, but the appellate court reversed based on a mandatory interpretation of the word 'shall,' holding that the Department lost jurisdiction over the involuntary discharge of the resident because it had not held a hearing within 10 days of her hearing request. The Supreme Court reversed the judgment of the appellate court and affirmed the judgment of the circuit court, concluding that the Department was not precluded from conducting a hearing beyond the 10-day time period. The Court held that section 3-411 of the Act is directory because there was no indication in the statute that the legislature intended to deny authority and prohibit further action in the case of noncompliance and because the rights of nursing home residents will not be generally injured by a directory construction.

People v. Eubanks, 2019 IL 123525 (December 5, 2019)

Defendant in this case was convicted of, among other offenses, aggravated driving under the influence (DUI) for a 2009 hit and run that left a woman dead and her son seriously injured. On appeal, the appellate court reversed the aggravated DUI conviction as section 11-501.2(c)(2) of the Illinois Vehicle Code (625 ILCS 5/11-501.2(c)(2) (West 2008)) was held facially unconstitutional because it permits compelled chemical testing without a warrant. The Supreme Court held that section 11-501.2(c)(2), which allows search only where there is probable cause to believe the individual is under the influence and there was a motor vehicle accident causing personal injury or death, is simply a "codified exigency" which will almost always be constitutional. Because it can be constitutionally applied in most instances, the statute is not

facially unconstitutional. However, the Court did hold that it is unconstitutional as applied to defendant's case. The Court reasoned that, given the passage of more than seven hours from arrest to blood draw, and nearly eight-and-a half hours from arrest to urine collection, there was no reasonable belief by law enforcement that seeking a warrant would have interfered with other pressing duties.