ARTICLE II. RULES ON CIVIL PROCEEDINGS IN THE TRIAL COURT

PART A. PROCESS AND NOTICE

Rule 101. Summons and Original Process--Form and Issuance

(a) General. The summons shall be issued under the seal of the court, ~~tested in~~ identifying the name of the clerk~~., and signed with his name. It~~ The summons shall clearly identify ~~be dated on~~ the date it is issued, shall be directed to each defendant, and shall bear the information required by Rule 131(d) for the plaintiff's attorney or the plaintiff if not represented by an attorney.

(b) Summons Requiring Appearance on Specified Day.

(1) In an action for money not in excess of $50,000, exclusive of interest and costs, or in any action subject to mandatory arbitration where local rule prescribes a specific date for appearance, the summons shall require each defendant to appear on a day specified in the summons not less than 21 or more than 40 days after the issuance of the summons (see Rule 181(b)), and shall be ~~in substantially the following form:~~ prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

~~In the Circuit Court of the _____ Judicial Circuit, _____ County, Illinois~~
~~(Or, In the Circuit Court of Cook County, Illinois)~~

~~A.B., C.D., *etc*.~~
~~(naming all plaintiffs),~~
~~Plaintiffs,~~
~~v. No. _____~~

~~Amount Claimed _____~~

~~H.J., K.L. *etc*.,~~
~~(naming all defendants),~~
~~Defendants~~

~~SUMMONS~~

~~To each defendant:~~
~~You are hereby summoned and required to appear before this court at _____ at _____ o'clock _____ M., on _____ 20__, to answer the complaint in this case, a copy of which is hereto attached. If you fail to do so, a judgment by default may be entered against you for the relief asked in the complaint.~~

~~To the officer:~~
~~This summons must be returned by the officer or other person to whom it was given for service, with indorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so indorsed.~~
~~This summons may not be served later than 30 days after its date.~~

~~Witness _____~~
~~(Seal of Court)~~

~~Clerk of Court~~

Plaintiff's Attorney (or plaintiff, if he is not represented by attorney)
_____
Address_____
Telephone No. _____
Facsimile Telephone No. _____
E-mail Address_____

(If service by facsimile transmission will be accepted, the telephone number of the plaintiff or plaintiff's attorney's facsimile machine is additionally required.)
Date of service _____, 20__ (to be inserted by officer on copy left with defendant or other person).

NOTICE TO DEFENDANTS

[Here simple and specific instructions, conforming to local practice, shall be set out outlining procedure for appearance and trial of the type of case covered by the summons.]

(2) In any action for forcible detainer or for recovery of possession of tangible personal property, the summons shall be in the same form, but shall require each defendant to appear on a day specified in the summons not less than seven or more than 40 days after the issuance of summons.

(3) If service is to be made under section 2-208 of the Code of Civil Procedure the return day shall be not less than 40 days or more than 60 days after the issuance of summons, and no default shall be taken until the expiration of 30 days after service.

(c) Summons in Certain Other Cases in Which Specific Date for Appearance is Required. In all proceedings in which the form of process is not otherwise prescribed and in which a specific date for appearance is required by statute or by rules of court, the form of summons shall conform as nearly as may be to the form set forth in paragraph (b) hereof.

(d) Summons Requiring Appearance Within 30 Days After Service. In all other cases the summons shall require each defendant to file his answer or otherwise file his appearance within 30 days after service, exclusive of the day of service (see Rule 181(a)), and shall be in substantially the following form: prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

In the Circuit Court of the _____ Judicial Circuit, _____ County, Illinois (Or, In the Circuit Court of Cook County, Illinois)

A.B., C.D., *etc*.
(naming all plaintiffs),
Plaintiffs,
v. No. _____

H.J., K.L. *etc*.,
(naming all defendants),
Defendants

SUMMONS

To each defendant:

You are summoned and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, in the office of the clerk of this court

~~within 30 days after service of this summons, not counting the day of service. If you fail to do so, a judgment by default may be entered against you for the relief asked in the complaint.~~

~~To the officer:~~

~~This summons must be returned by the officer or other person to whom it was given for service, with indorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned so indorsed.~~

~~This summons may not be served later than 30 days after its date.~~

~~Witness~~ _____

~~(Seal of Court)~~

_____

~~Clerk of Court~~

~~Plaintiff's Attorney (or plaintiff, if he is not represented by attorney)~~ _____

~~Address~~ _____

~~Telephone No.~~ _____

~~Facsimile Telephone No.~~ _____

~~E-mail Address~~ _____

~~(If service by facsimile transmission will be accepted, the telephone number of the plaintiff or plaintiff's attorney's facsimile machine is additionally required.)~~

~~Date of service~~ _____, ~~20__ (to be inserted by officer on copy left with defendant or other person).~~

(e) Summons in Cases under the Illinois Marriage and Dissolution of Marriage Act. In all proceedings under the Illinois Marriage and Dissolution of Marriage Act, the summons shall include a notice on its reverse side referring to a dissolution action stay being in effect on service of summons, and shall state that any person who fails to obey a dissolution action stay may be subject to punishment for contempt, and shall include language:

(1) restraining both parties from physically abusing, harassing, intimidating, striking, or interfering with the personal liberty of the other party or the minor children of either party; and

(2) restraining both parties from concealing a minor child of either party from the child's other parent.

The restraint provided in this subsection (e) does not operate to make unavailable any of the remedies provided in the Illinois Domestic Violence Act of 1986.

(f) Waiver of Service of Summons. In all cases in which a plaintiff notifies a defendant of the commencement of an action and requests that the defendant waive service of summons under section 2-213 of the Code of Civil Procedure, the request shall be in writing ~~in the following form:~~ prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

~~In the Circuit Court of the~~ _____ ~~Judicial Circuit,~~ _____ ~~County, Illinois (Or, In the Circuit Court of Cook County, Illinois)~~

~~A.B., C.D., *etc.*~~

~~(naming all plaintiffs),~~

~~Plaintiffs,~~

~~No.~~ _____

~~v.~~ ~~Amount Claimed~~ _____

~~H.J., K.L., *etc.*~~

(naming all defendants),

Defendants

Notice and Acknowledgment of Receipt of Summons and Complaint

NOTICE

To: (Insert the name and address of the person to be served)

The enclosed summons and complaint are served pursuant to section 2-213 of the Code of Civil Procedure.

You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within _____* days.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within ____* days, you (or the party on whose behalf you are being served) may be served a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within ____** days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this notice and acknowledgment of receipt of summons and complaint will have been mailed on _____. (Insert Date)

Signature _____

Date of Signature _____

ACKNOWLEDGMENT OF RECEIPT OF
SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above-captioned matter at (inset address).

PRINT or TYPE Name _____

Relationship to Entity/Authority to Receive Service of Process

_____

(Not Applicable if you are the named Defendant or Respondent)

Signature _____

Date of Signature _____

*(To be completed by the person sending the notice.) Date for return of waiver must be at least 30 days from the date on which the request is sent, or 60 days if the defendant is addressed outside the United States.

**(To be completed by the person sending the notice.) Date for answering complaint must be at least 60 days from the date on which the request is sent, or 90 days if the defendant is addressed outside the United States.

(g) Use of Wrong Form of Summons. The use of the wrong form of summons shall not affect the

jurisdiction of the court.

Amended effective August 3, 1970, July 1, 1971, and September 1, 1974; amended May 28, 1982, effective July 1, 1982; amended October 30, 1992, effective November 15, 1992; amended January 20, 1993, effective immediately; amended December 30, 1993, effective January 1, 1994; amended February 1, 1996, effective immediately; amended May 30, 2008, effective immediately; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended Aug. 16, 2017, eff. immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments
(Revised September 1, 1974)

As adopted in 1967, Rule 101 was derived from former Rule 2, with changes in paragraph (b). Paragraph (b) was inserted in former Rule 2, effective January 1, 1964, to provide, for relatively small cases, the form of summons that had been in use in the Municipal Court of Chicago prior to that date. In cases up to $10,000, the time was changed to not less than 21 or more than 40 days. Effective August 3, 1970, the $10,000 limit was changed to $15,000. The appearance day in small claims is covered by Rule 283.

The appearance day in forcible entry and detainer cases was left at not less than seven or more than 40 days. To conform the practice to the requirements of notice in actions seeking restoration of property wrongfully detained, set forth by the Supreme Court of the United States in *Fuentes v. Shevin* (1972), 407 U.S. 67, subparagraph (b)(2) of the rule was amended in 1974 to provide for a summons in such cases returnable on a day specified in the summons, not less than seven or more than 40 days from issuance, as in forcible entry and detainer cases. Under the rule as amended, independent of the statutory remedy of replevin, a party seeking return of personal property may proceed in an action in the nature of an action in detinue at common law, and serve process in the manner provided.

Subparagraph (b)(3), added to former Rule 2 in 1964 and carried forward into Rule 101 in 1967, set 40 days as the return day on service made under section 16 of the Civil Practice Act. Effective July 1, 1971, this provision was amended to substitute for "40 days" the somewhat more flexible provision "not less than 40 days or more than 60 days."

The provision of paragraph (b) of this rule permitting specific instructions under the heading "Notice to Defendant" has probably not been adequately implemented by the judges of the trial courts. It is the committee's view that the summons should give as much specific information to the defendant as possible. For instance, the particular court room number and place of holding court ought to be given. Instructions regarding the method of entering an appearance and a statement whether an answer must be filed with the appearance, or the date for filing an answer after an appearance, can be stated in the "Notice to Defendant." Rule 181, relating to appearance, expressly recognizes that the "Notice to Defendant" under Rule 101(b) is controlling.

In 1974, paragraph (d) was amended to insert in the specimen summons reference to the fact that a copy of the complaint is attached, thus conforming the language of the summons under paragraph (d) in this respect to the language in the summons under paragraph (b).

Rule 102. Service of Summons and Complaint; Return

(a) Placement for Service. Promptly upon issuance, summons (together with copies of the complaint as required by Rule 104) shall be placed for service with the sheriff or other officer or person authorized to serve process.

(b) When Service Must Be Made. No summons in the form provided in paragraph (d) of Rule 101 may be served later than 30 days after its date. A summons in the form provided in paragraph (b) of Rule 101 may not be served later than three days before the day for appearance.

(c) Indorsement Showing Date of Service. The officer or other person making service of summons shall indorse the date of service upon the copy left with the defendant or other person. Failure to indorse the date of service does not affect the validity of service.

(d) Return. The officer or person making service shall make a return by filing proof of service immediately after service on all defendants has been had, and, in any event, shall make a return: (1) in the case of a summons bearing a specific return day or day for appearance, not less than 3 days before that day; (2) in other cases, immediately after the last day fixed for service. If there is more than one defendant, the proof of service ~~shall, at the request of the plaintiff or his attorney, be made~~ may be filed immediately after service on each defendant. ~~In that case, the proof of service to be filed may be indorsed upon a copy of the summons and the original retained until service is had upon all defendants or until expiration of the time provided for service.~~ The proof of service need not state whether a copy of the complaint was served. ~~The officer or other person serving the summons may file proof of service by mail.~~ A party who has placed a summons with an officer or other person who is authorized to serve process, but who does not have access to the court filing system, shall file the proof of service obtained from the officer. Failure ~~of the officer or other person~~ to return the summons or file proof of service does not invalidate the summons or the service thereof, if had.

(e) Post Card Notification to Plaintiff. If the plaintiff furnishes a post card, the officer or other person making service of the summons, immediately upon return of the summons, shall mail to the plaintiff or his attorney the post card indicating whether or not service has been had, and if so on what date.

Amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

(Revised July 1, 1971)

This is former Rule 3, as it existed prior to January 1, 1964, without change of substance, except for the deletion of the last paragraph, which provided for writs made returnable to justices of the peace, *etc.*, during the transition into practice under the 1964 judicial article and is no longer necessary.

Rule 103. Alias Summons; Dismissal for Lack of Diligence

(a) Alias Summonses. On request of any party, the clerk shall issue successive alias summonses, regardless of the

disposition of any summons or alias summons previously issued.

(b) Dismissal for Lack of Diligence. If the plaintiff fails to exercise reasonable diligence to obtain service on a defendant prior to the expiration of the applicable statute of limitations, the action as to that defendant may be dismissed without prejudice~~, with the right to refile if the statute of limitation has not run~~. If the failure to exercise reasonable diligence to obtain service on a defendant occurs after the expiration of the applicable statute of limitations, the dismissal shall be with prejudice as to that defendant only and shall not bar any claim against any other party based on vicarious liability for that dismissed defendant's conduct. The dismissal may be made on the application of any ~~defendant~~ party or on the court's own motion. In considering the exercise of reasonable diligence, the court shall review the totality of the circumstances, including both lack of reasonable diligence in any previous case voluntarily dismissed or dismissed for want of prosecution, and the exercise of reasonable diligence in obtaining service in any case refiled under section 13–217 of the Code of Civil Procedure.

(c) Summonses for Additional Parties. On request, the clerk shall issue summonses for third-party defendants and for parties added as defendants by order of court or otherwise.

Amended October 21, 1969, effective January 1, 1970; amended May 28, 1982, effective July 1, 1982; amended May 20, 1997, effective July 1, 1997; amended June 5, 2007, effective July 1, 2007.

Committee Comments
(June 5, 2007)

The 2007 amendment clarified that a Rule 103(b) dismissal which occurred after the expiration of the applicable statute of limitations shall be made with prejudice as to that defendant if the failure to exercise reasonable diligence to obtain service on the defendant occurred after the expiration of the applicable statute of limitations. However, even a dismissal with prejudice would not bar any claim against any other party based on vicarious liability for that dismissed defendant's conduct.

Further, the last sentence of Rule 103(b) addresses situations where the plaintiff has refiled a complaint under section 13–217 of the Code of Civil Procedure within one year of the case either being voluntarily dismissed pursuant to section 2–1009 or being dismissed for want of prosecution. If the statute of limitations has run prior to the plaintiff's ~~request to refile the~~ refiled complaint, the trial court has the discretion to dismiss the refiled case if the plaintiff failed to exercise reasonable diligence in obtaining service. The 2007 amendment applies the holding in *Martinez v. Erickson*, 127 Ill. 2d 112, 121-22 (1989), requiring a trial judge "to consider service after refiling in the light of the entire history of the case" including reasonable diligence by plaintiff after refiling.

Because public policy favors the determination of controversies according to the substantive rights of the parties, Rule 103(b) should not be used by the trial courts to simply clear a crowded docket, nor should they delay ruling on a defendant's dismissal motion until after the statute of limitations has run. See *Kole v. Brubaker*, 325 Ill. App. 3d 944, 954 (2001).

Committee Comments
(Revised May 1997)

This rule, except for paragraph (b), is former Rule 4, as it existed prior to 1967.

Paragraph (b) was changed in the 1967 revision to provide that the dismissal may be with prejudice, and was further revised in 1969 to provide that a dismissal with prejudice shall be entered only when the failure to exercise due diligence to obtain service occurred after the expiration of the applicable statute of limitations. Prior to the expiration of the statute, a delay in service does not prejudice a defendant.

The 1997 amendment eliminates the power to dismiss an entire action based on a delay in serving some of the defendants if the plaintiff has exercised reasonable diligence with respect to other defendants. The amendment also eliminates the *res judicata* effect (but not the statute of limitation effect) of a Rule 103(b) dismissal. Rule 4(m) of the Federal Rules of Civil Procedure has similar provisions regarding dismissals for delay in serving process in federal court actions.

Because a Rule 103(b) dismissal will be "without prejudice" for *res judicata* purposes, the dismissal will not extinguish any claims that the plaintiff might have against an undismissed defendant. Whether the dismissal will extinguish the plaintiff's claims against the dismissed defendant will depend on whether the dismissal occurs before or after the statute of limitation has run. If before, the plaintiff will be able to refile; if after, the plaintiff will be unable to refile because the claims will be time-barred.

Rule 104. Service of Pleadings and Other Papers; Filing

(a) Delivery of Copy of Complaint. Every ~~copy of a~~ summons used in making service shall have attached thereto a copy of the complaint., ~~which shall be furnished by plaintiff.~~

(b) Filing of Documents and Proof of Service. Pleadings subsequent to the complaint, written motions, and other documents required to be filed shall be filed with the clerk with a certificate of counsel or other proof that the documents~~copies~~ have been served on all parties who have appeared and have not theretofore been found by the court to be in default for failure to plead.

(c) Excusing Service. For good cause shown on *ex parte* application, the court or any judge thereof may excuse the delivery or service of any complaint, pleading, or written motion or part thereof on any party, but the attorney filing it shall furnish the document~~a copy~~ promptly and without charge to any party requesting it.

(d) Failure to Serve Documents~~Copies~~. Failure to deliver or serve documents~~copies~~ as required by this rule does not in any way impair the jurisdiction of the court over the person of any party. If a party entitled to service of a document is not served and the failure of service is the fault of the filing party, ~~but~~ the aggrieved party may obtain the document ~~a copy~~ from the clerk, and the court shall order the offending party to reimburse the aggrieved party for the expense thereof.

Amended effective January 1, 1970; amended Jan. 4, 2013, eff. immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

This is former Rule 5 without change of substance.

Rule 105. Additional Relief Against Parties in Default-Notice

(a) Notice-Form and Contents. If new or additional relief, whether by amendment, counterclaim, or otherwise, is sought against a party not entitled to notice under Rule 104, notice shall be given him as herein provided. The notice shall be captioned with the case name and number and shall be directed to the party. It shall state that a pleading seeking new or additional relief against him has been filed and that a judgment by default may be taken against him for the new or additional relief unless he files an answer or otherwise files an appearance in the office of the clerk of the court within 30 days after service, receipt by certified or registered mail, or the first publication of the notice, as the case may be, exclusive of the day of service, receipt or first publication. Except in case of publication, a copy of the new or amended pleading shall be attached to the notice, unless excused by the court for good cause shown on *ex parte* application.

(b) Service. The notice may be served by any of the following methods:

(1) By any method provided by law for service of summons, either within or without this State. Service may be made by an officer or by any person over 18 years of age not a party to the action. Proof of service by an officer may be made by return as in the case of a summons. Otherwise proof of service shall be made by affidavit or by certification, as provided in Section 1-109 of the Code of Civil Procedure, of the server, stating the time, manner, and place of service. The court may consider the affidavit or certification and any other competent proofs in determining whether service has been properly made.

(2) By prepaid certified or registered mail addressed to the party, return receipt requested, showing to whom delivered and the date and address of delivery. The notice shall be sent "restricted delivery" when service is directed to a natural person. Service is not complete until the notice is received by the defendant, and the registry receipt is *prima facie* evidence thereof.

(3) By publication, upon the filing of an affidavit as required for publication of notice of pendency of

the action in the manner of but limited to the cases provided for, and with like effect as, publication of notice of pendency of the action.

Amended September 29, 1978, effective November 1, 1978; amended May 28, 1982, effective July 1, 1982; amended November 21, 1988, effective January 1, 1989; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments
(Revised September 29, 1978)

Rule 105, as adopted in 1967, carried forward former Rule 7-1 without change. Subparagraph (b)(2) was amended in 1978 to permit service by "certified or registered mail addressed to the party, restricted delivery, return receipt requested showing to whom, date and address of delivery," instead of "registered mail addressed to the party, return receipt requested, delivery limited to addressee only," the latter class of postal service having been discontinued.

Rule 106. Notice of Petitions Filed for Relief From, or Revival of, Judgments

Notice of the filing of a petition under section 2--1401, section 2--1601 or section 12--183(g) of the Code of Civil Procedure shall be given by the same methods provided in Rule 105 for the giving of notice of additional relief to parties in default.

Amended effective July 1, 1971; amended May 28, 1982, effective July 1, 1982; amended July 1, 1985, effective August 1, 1985.

Committee Comments
(Revised July 1, 1985)

This is former Rule 7--2, as it existed prior to 1964, without change of substance. In 1971, it was amended to insert cross-references to section 72 of the Civil Practice Act and Rule 105.

This rule was amended in 1985 to provide a specific requirement for notice in both revival-of-judgment proceedings and release-of-judgment proceedings, as well as in cases involving petitions seeking relief from certain final judgments.

Rule 107. Notice of Hearing for an Order of Replevin

(a) Form of Notice. A notice for an order of replevin (see 735 ILCS 5/19-105) shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.~~substantially in the following form:~~

~~In the Circuit Court of the _____ Judicial Circuit, _____ County, Illinois (Or, In the Circuit Court of Cook County, Illinois)~~

~~A.B., C.D., *etc*. (naming all plaintiffs),~~

~~_____ Plaintiffs,~~

~~v.~~

~~No. _____~~

~~H.J., K.L., *etc*. (naming all defendants),~~

~~_____ Defendants~~

~~To each defendant:~~

~~You are hereby notified that on _____, 20_____, a complaint, a copy of which is attached, was filed in the above court seeking an order of replevin. Pursuant to law a hearing will be held to determine whether such an order shall be entered in this case. If you wish to contest the entry of such order, you must appear at this hearing at _____, at _____ o'clock ____ M., on _____, 20__.~~

~~_____~~

~~_____~~

~~Attorney for the Plaintiff~~

~~Address_____~~
~~Telephone No._____~~
~~Facsimile Telephone No. _____~~
~~E-mail Address_____~~

~~(If service by facsimile transmission will be accepted, the telephone number of the plaintiff or plaintiff's attorney's facsimile machine is required.)~~

(b) Service. Notice of the hearing shall be served not less than five days prior to the hearing in accordance with sections 2-202 through 2-205 of the Code of Civil Procedure, or by mail in the manner prescribed in Rule 284.

Effective September 1, 1974; amended May 28, 1982, effective July 1, 1982; amended October 30, 1992, effective November 15, 1992; amended May 30, 2008, effective immediately; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

In 1973, the Illinois Replevin Act (Ill. Rev. Stat. 1973, ch. 119) was amended to provide for a notice and hearing prior to the issuance of the writ in conformity with the decision of the United States Supreme Court in *Fuentes v. Shevin* (1972), 407 U.S. 67. Section 4(a) of the statute, as amended, provides that five days' notice of a hearing on the question of the issuance of a writ of replevin be given "in the manner required by Rule of the Supreme Court." Rule 107 provides the form and manner of service of such notice.

Rule 108. Explanation of Rights of Heirs and Legatees When Will Admitted or Denied Probate

(a) Wills Originally Proved. When a will is admitted or denied admission to probate under section 6-4 or section 7-4 of the Probate Act of 1975, as amended, the information mailed to each heir and legatee under section 6-10 shall include an explanation of the rights of interested persons prepared by utilizing, or substantially adopting the appearance and content of, Form 1 or Form 2 provided in the Article II Forms Appendix.~~in substantially the following form~~ (Form 1 should be used when the will is admitted to probate and Form 2 when probate is denied.~~):~~

~~Form 1~~

~~Notice to Heirs and Legatees~~

~~Attached to this notice are copies of a petition to probate a will and an order admitting the will to probate. You are named in the petition as an heir or legatee of the decedent.~~

~~Within 42 days after the effective date of the original order of admission, you may file a petition with the court to require proof of the will by testimony of the witnesses to the will in open court or other evidence, as provided in section 6-21 of the Probate Act of 1975 755 ILCS 5/6-21).~~

~~You also have the right under section 8-1 of the Probate Act of 1975 (755 ILCS 5/8-1) to contest the validity of the will by filing a petition with the court within 6 months after admission of the will to probate.~~

~~Form 2~~

~~Notice to Heirs and Legatees~~

~~Attached to this notice are copies of a petition to probate a will and an order denying admission of the will to probate. You are named in the petition as an heir or legatee of the decedent.~~

~~You have the right under section 8-2 of the Probate Act of 1975 (755 ILCS 5/8-2) to contest the denial of admission by filing a petition with the court within 6 months after entry of the order of denial.~~

When a will is admitted or denied admission to probate under section 6-4 or section 7-4 of the Probate Act of 1975, as amended, and where notice under section 6-10 is given by publication, such notice shall be prepared by utilizing, or substantially adopting the appearance and content of, Form 3 or Form 4 provided in the Article II Forms Appendix.~~in substantially the following form~~ (Form 3 should be used when the will is admitted to probate and Form 4 when probate is denied.~~):~~

~~Form 3~~

~~Notice to Heirs and Legatees~~

~~Notice is given to _____ (names), who are heirs or legatees in the above proceeding to probate a will and whose name or address is not stated in the petition to admit the will to probate, that an order was entered by the court on _____, admitting the will to probate.~~

~~Within 42 days after the effective date of the original order of admission you may file a petition with the court to require proof of the will by testimony of the witnesses to the will in open court or other evidence, as provided in section 6-21 of the Probate Act of 1975 (755 ILCS 5/6-21).~~

~~You also have the right under section 8-1 of the Probate Act of 1975 (755 ILCS 5/8-1) to contest the validity of the will by filing a petition with the court within 6 months after admission of the will to probate.~~

~~Form 4~~

~~Notice to Heirs and Legatees~~

~~Notice is given to _____ (names), who are heirs or legatees in the above~~

proceeding to probate a will and whose name or address is not stated in the petition to admit the will to probate, that an order was entered by the court on _____, denying admission of the will to probate.

You have the right under section 8-2 of the Probate Act of 1975 (755 ILCS 5/8-2) to contest the denial of admission by filing a petition with the court within 6 months after entry of the order of denial.

(b) Foreign Wills Proved by Copy. When a will is admitted or denied admission to probate under section 7-3 of the Probate Act of 1975, as amended ("Proof of foreign will by copy"), the information mailed to each heir and legatee under section 6-10 of the Probate Act of 1975, as amended, shall include an explanation of the rights of interested persons prepared by utilizing, or substantially adopting the appearance and content of, Form 1 or Form 2 provided in the Article II Forms Appendix. in substantially the following form (Form 1 should be used when the will is admitted to probate and Form 2 when probate is denied.):

Form 1

Notice to Heirs and Legatees

Attached to this notice are copies of a petition to probate a foreign will and an order admitting the foreign will to probate. You are named in the petition as an heir or legatee of the decedent.

You have the right under section 8-1 of the Probate Act of 1975 (755 ILCS 5/8-1) to contest the validity of the foreign will by filing a petition with the court within 6 months after admission of the foreign will to probate.

Form 2

Notice to Heirs and Legatees

Attached to this notice are copies of a petition to probate a foreign will and an order denying admission of that foreign will to probate. You are named in the petition as an heir or legatee of the decedent.

You have the right under section 8-2 of the Probate Act of 1975 (755 ILCS 5/8-2) to contest the denial of admission by filing a petition with the court within 6 months after entry of the order of denial.

When a will is admitted or denied probate under section 7-3 of the Probate Act of 1975, as amended ("Proof of foreign will by copy"), and where notice under section 6-10 is given by publication, such notice shall be prepared by utilizing, or substantially adopting the appearance and content of, Form 3 or Form 4 provided in the Article II Forms Appendix. in substantially the following form (Form 3 should be used when the will is admitted to probate and Form 4 when probate is denied.):

Form 3

Notice to Heirs and Legatees

Notice is given to _____ (names), who are heirs or legatees in the above proceeding to probate a foreign will and whose name or address is not stated in the petition to admit the foreign will to probate, that an order was entered by the court on _____, admitting the foreign will to probate.

You have the right under section 8-1 of the Probate Act of 1975 (755 ILCS 5/8-1) to contest the validity of the foreign will by filing a petition with the court within 6 months after admission of the foreign will to probate.

~~Form 4~~

~~Notice to Heirs and Legatees~~

~~Notice is given to _____ (names), who are heirs or legatees in the above proceeding to probate a foreign will and whose name or address is not stated in the petition to admit the foreign will to probate, that an order was entered by the court on _____, denying admission of the foreign will to probate.~~

~~You have the right under section 8-2 of the Probate Act of 1975 (755 ILCS 5/8-2) to contest the denial of admission by filing a petition with the court within 6 months after entry of the order of denial.~~

Adopted February 1, 1980, effective March 1, 1980; amended August 9, 1983, effective October 1, 1983; amended April 1, 1992, effective August 1, 1992; amended May 30, 2008, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

(February 1980)

This rule was adopted pursuant to amended section 6-10(a) of the Probate Act of 1975, effective January 1, 1980. The first blank in forms 3 and 4 is for the names of heirs and legatees whose addresses are unknown and for insertion of "unknown heirs" if unknown heirs are referred to in the petition.

Rule 109. Reserved

Former Rule 109 was repealed May 28, 1982, effective July 1, 1982.

Rule 110. Explanation of Rights in Independent Administration; Form of Petition to Terminate

When independent administration is granted in accordance with section 28-2 of the Probate Act of 1975, as amended, the notice required to be mailed to heirs and legatees under section 6-10 or section 28-2(c) of that act shall be accompanied by an explanation of the rights of interested persons prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix. ~~in substantially the following form:~~

~~Rights of Interested Persons During Independent Administration; Form of Petition to Terminate Administration~~

~~A copy of an order is enclosed granting independent administration of decedent's estate. This means that the executor or administrator will not have to obtain court orders or file estate documents in court~~

during probate. The estate will be administered without court supervision, unless an interested person asks the court to become involved.

Under section 28-4 of the Probate Act of 1975 (755 ILCS 5/28-4) any interested person may terminate independent administration at any time by mailing or delivering a petition to terminate to the clerk of the court. However, if there is a will which directs independent administration, independent administration will be terminated only if the court finds there is good cause to require supervised administration; and if the petitioner is a creditor or nonresiduary legatee, independent administration will be terminated only if the court finds that termination is necessary to protect the petitioner's interest.

A petition in substantially the following form may be used to terminate independent administration:

In the Circuit Court of the _____ Judicial Circuit,

_____ County, Illinois

(Or, In the Circuit Court of Cook County, Illinois)

In re Estate of _____, Deceased

(name of decedent)

No. _____

Petition to Terminate Independent Administration

_____, on oath states:

1. On _____ ____, 20__, an order was entered granting independent administration to _____ as independent _____.

(executor) (administrator)

2. I am an interested person in this estate as _____

(heir) (nonresiduary legatee) (residuary legatee) (creditor) (representative)

*3. The will _____ direct independent administration.

(does) (does not)

4. I request that independent administration be terminated.

_____

_____

(Signature of petitioner)

_____ Signed and sworn to before me

_____, 20__

_____

_____

Notary Public

*Strike if no will.

~~In addition to the right to terminate independent administration, any interested person may petition the court to hold a hearing and resolve any particular question that may arise during independent administration, even though supervised administration has not been requested (755 ILCS 5/28-5). The independent representative must mail a copy of the estate inventory and final account to each interested person and must send notice to or obtain the approval of each interested person before the estate can be closed (755 ILCS 5/28-6, 28-11). Any interested person has the right to question or object to any item included in or omitted from an inventory or account or to insist on a full court accounting of all receipts and disbursements with prior notice, as required in supervised administration (755 ILCS 5/28-11).~~

Adopted February 1, 1980, effective March 1, 1980; amended May 30, 2008, effective immediately; amended Jan. 4, 2013, eff. immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

(February 1980)

This rule was adopted pursuant to new section 28-2(a) of the Probate Act of 1975, effective January 1, 1980.

Rules 111-112. Reserved

PART B. PLEADINGS AND OTHER DOCUMENTS

Rule 113 . Practice and Procedure in Mortgage Foreclosure Cases

(a) Applicability of the Rule. The requirements of this rule supplement, but do not replace, the requirements set forth in the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq*.) and are applicable only to those foreclosure actions filed on or after the effective date of May 1, 2013.

(b) Supporting Documents for Complaints. In addition to the documents listed in section 15-1504 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1504), a copy of the note, as it currently exists, including all indorsements and allonges, shall be attached to the mortgage foreclosure complaint at the time of filing.

(c) Prove-up Affidavits.

(1) Requirement of Prove-up Affidavits. All plaintiffs seeking a judgment of foreclosure, under section 15-1506 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1506), by default or otherwise, shall be required to submit an affidavit in support of the amounts due and owing under the note when they file any motion requesting a judgment of default against a mortgagor or a judgment of foreclosure.

(2) Content of Prove-up Affidavits. All affidavits submitted in support of entry of a judgment of foreclosure, default or otherwise, shall contain, at a minimum, the following information:

(i) The identity of the affiant and an explanation as to whether the affiant is a custodian of records or a person familiar with the business and its mode of operation. If the affiant is a person familiar with the business and its mode of operation, the affidavit shall explain how the affiant is familiar with the business and its mode of operation.

(ii) An identification of the books, records, and/or other documents in addition to the payment history that the affiant reviewed and/or relied upon in drafting the affidavit, specifically including records transferred from any previous lender or servicer. The payment history must be attached to the affidavit in only those cases where the defendant(s) filed an appearance or responsive pleading to the complaint for foreclosure.

(iii) The identification of any computer program or computer software that the entity relies on to record and track mortgage payments. Identification of the computer program or computer software shall also include the source of the information, the method and time of preparation of the record to establish that the computer program produces an accurate payment history, and an explanation as to why the records should be considered "business records" within the meaning of the law.

(3) Additional Evidence. The affidavit shall contain any additional evidence, as may be necessary, in connection with the party's right to enforce the instrument of indebtedness.

(4) Form of Prove-up Affidavits. The affidavit prepared in support of entry of a judgment of foreclosure, by default or otherwise, shall not have a stand-alone signature page if formatting allows the signature to begin on the last page of the affiant's statements. The affidavit prepared shall, at a minimum, be prepared by utilizing or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix. ~~in substantially the following form:~~

~~**Form 1**~~

~~IN THE CIRCUIT COURT OF THE ____ JUDICIAL CIRCUIT~~
~~FOR _____ COUNTY, ILLINOIS~~

~~_____)~~
~~Plaintiff(s))~~
~~v.) Case. No. _____~~
~~_____)~~
~~Defendant(s))~~

~~AFFIDAVIT OF AMOUNTS DUE AND OWING~~

~~I, _____, am a _____ of _____. I have authority to make this statement on its behalf because _____ (identify whether you are a custodian of records or a person familiar with the business and its mode of operation; if you are a person familiar with the business and its mode of operation, explain how you are familiar with the business and its mode of operation). If called to testify at the trial of this matter, I could competently testify as to the facts contained in this affidavit.~~

~~[If the loan was previously serviced by another entity, the affidavit should provide as follows for the most recent transfer of servicing rights: _____ (name of the bank) acquired the servicing rights for the Defendant's loan on _____ (date) from _____ (name of the prior institution). At the time of this transfer, the Defendant's loan was _____ (current, or state the amount by which the loan was in default at the time of the transfer).]~~

The amount due is based on my review of the following records: _____. A true and accurate copy of the payment history and any other document I reviewed when making this calculation is attached to this affidavit (this sentence would only be included if applicable).

_____ (name of the bank) uses _____ (name of the computer program/software) to automatically record and track mortgage payments. This type of tracking and accounting program is recognized as standard in the industry. When a mortgage payment is received, the following procedure is used to process and apply the payment, and to create the records I reviewed: _____ (include the source of the information, method and time of preparation of the record to establish that the computer program produces an accurate record). The record is made in the regular course of _____'s (name of bank) business. In the case at bar, the entries reflecting the Defendant's payments were made in accordance with the procedure detailed above, and these entries were made at or near the time that the payment was received. _____(name of the computer program/software) accurately records mortgage payments when properly operated. In the case at bar, _____(name of the computer program/software) was properly operated to accurately record the Defendant's mortgage payments.

Based on the foregoing, _____ failed to pay amounts due under the Note, and the amount due and owing as of _____ is:

Principal	$_____
Interest	$_____
Pro Rata MIP/PMI	$_____
Escrow Advance	$_____
Late Charges	$_____
NSF Charges	$_____
Property Maintenance	$_____
Property Inspections	$_____
BPO	$_____
GROSS AMOUNT DUE	$_____
Less/Plus balance in reserve accounts	$_____
NET AMOUNT DUE	$_____

AFFIANT STATES NOTHING MORE.

BY: _____

~~_____ Affiant~~

~~Subscribed and sworn to before me this~~
~~____ day of _____, _____~~
~~By _____~~
~~_____~~
~~_____~~
~~Notary Public~~
~~State of [_____]~~
~~My Commission expires: _____, _____~~
~~Personally Known ____ OR Produced Identification _____.~~
~~Type of identification produced: _____.~~

If executed within the boundaries of Illinois, the affidavit may be signed pursuant to section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109) rather than being notarized.

(d) Defaults.

(1) Notice Required. In all mortgage foreclosure cases where the borrower is defaulted by court order, a notice of default and entry of judgment of foreclosure shall be prepared by the attorney for plaintiff and shall be mailed by the Clerk of the Circuit Court for each judicial circuit. Within two business days after the entry of default, the~~The~~ attorney for plaintiff shall prepare the notice in its entirety, file it with ~~and deliver to~~ the Clerk of the Circuit Court, and provide the Clerk with one copy ~~for filing and one copy~~ for mailing to each borrower address specified in the notice. ~~within two business days after the entry of default.~~ Within five business days after the entry of default, the ~~The~~ Clerk of the Circuit Court shall mail, ~~within five business days after the entry of default,~~ by United States Postal Service, a copy of the notice of default and entry of judgment of foreclosure to the address(es) provided by the attorney for the plaintiff in an envelope bearing the return address of the Clerk of the Circuit Court and file proof thereof. The notice shall be mailed to the property address or the address on any appearance or other document filed by any defendant. Any notices returned by the United States Postal Service as undeliverable shall be filed in the case file maintained by the Clerk of the Circuit Court.

(2) Form of Notice. The notice of default and entry of judgment of foreclosure shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.~~in substantially the following form:~~

~~**Form 2**~~

~~IN THE CIRCUIT COURT OF THE ____ JUDICIAL CIRCUIT~~
~~FOR _____ COUNTY, ILLINOIS~~

~~_____)~~
~~Plaintiff(s))~~
~~v.) Case. No. _____~~
~~_____)~~
~~Defendant(s))~~

~~NOTICE OF ENTRY OF DEFAULT AND JUDGMENT OF FORECLOSURE~~

To: _____

_____

_____

_____

This notice is to advise you of recent activity in the mortgage foreclosure lawsuit now pending in the Circuit Court. DO NOT IGNORE THIS NOTICE. YOU SHOULD ACT IMMEDIATELY.

The Circuit Court has entered an Order of Default and a Judgment of Foreclosure and Sale against you in your case concerning the property located at [insert address].

You may be entitled to file a Motion to Vacate this order. Any such motion should be filed as soon as possible.

[If applicable] You may redeem the property from foreclosure by paying $_____, which is the total amount due plus fees and costs, by [insert day].

[If applicable] If you need legal advice, you may contact _____ for free legal advice.

_____ [NAME OF CLERK]

_____ Clerk of the Circuit Court of _____ County

_____ [Contact information]

(e) Effect on Judgment and Orders. Neither the failure to send the notice required by paragraph (d)(i) nor any errors in preparing or sending the notice shall affect the legal validity of the order of default, the judgment of foreclosure, or any other orders entered pursuant to the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq*.) and cannot be the basis for vacating an otherwise validly entered order.

(f) Judicial Sales. In addition to the requirements for judicial sales set forth in sections 15-1506 and 15-1507 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1506, 15-1507) the following will apply to mortgage foreclosure sales:

(1) Notice of Sale. Not fewer than 10 business days before the sale, the attorney for the plaintiff shall send notice by mail to all defendants, including defendants in default, of the foreclosure sale date, time, and location of the sale.

(2) Selling Officers. Any foreclosure sale held pursuant to section 15-1507 may be conducted by a private selling officer who is appointed in accordance with section 15-1506(f)(3).

(3) Surplus Funds. If a judicial foreclosure sale held pursuant to Section 15-1507 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1507) results in the existence of a surplus of funds exceeding the amount due and owing as set forth in the judgment of foreclosure, the attorney for the plaintiff shall send a special notice to the mortgagors advising them of the surplus funds and enclosing a form for presentment of the motion to the court for the funds.

(g) Special Notice of Surplus Funds. The special notice shall be mailed and shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix. in substantially the following form:

Form 3

IN THE CIRCUIT COURT OF THE ____ JUDICIAL CIRCUIT

FOR _____ COUNTY, ILLINOIS

~~_____)~~

~~Plaintiff(s))~~

~~v.) Case. No. _____~~

~~_____)~~

~~Defendant(s))~~

~~SPECIAL NOTICE OF SURPLUS FUNDS~~

~~To: _____~~
~~_____~~
~~_____~~
~~_____~~

~~There is $_____ remaining after the sale of your property at [insert address of property sold]. You may be entitled to this money.~~

~~If you want to obtain this money, you need to:~~

~~(1) Complete the enclosed form.~~

~~(2) Take the completed form to the Clerk of the Circuit Court [insert the information for the Clerk of the Circuit Court in which the case is pending].~~

~~(3) Schedule a date to present the paperwork to the judge.~~

~~(4) Mail a copy of the completed form, at least five business days before the date with the judge, to: [insert service list].~~

(h) Petition for Turnover of Surplus Funds. Each judicial circuit shall make readily available a form petition for turnover of surplus funds to be included in the Special Notice of Surplus Funds required to be mailed by the attorney for plaintiffs. The petition shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.~~in substantially the following form:~~

~~Form 4~~

~~IN THE CIRCUIT COURT OF THE ____ JUDICIAL CIRCUIT~~
~~FOR _____COUNTY, ILLINOIS~~

~~_____)~~

~~Plaintiff(s))~~

~~v.) Case. No. _____~~

~~_____)~~

~~Defendant(s))~~

~~NOTICE OF MOTION AND PETITION FOR TURNOVER OF SURPLUS FUNDS~~

TO: _____

_____

_____

_____

On _____, _____, at _____ a.m./p.m. or as soon thereafter as counsel may be heard, I shall appear before the Honorable _____ or any Judge sitting in that Judge's stead, in the courtroom usually occupied by him/her, located at _____, Illinois, and present:

PETITION FOR TURNOVER OF SURPLUS FUNDS

(with Appearance)

Now come(s) _____, and move(s) this Court for entry of an order turning over the surplus proceeds from the foreclosure sale. In support of this Petition, Petitioner(s) state(s) as follows:

(1) All parties to this proceeding have been given notice of this Petition.

(2) The subject property was sold at a foreclosure sale for more than the amount owed the mortgage company and the sale was approved by the Court on ___/____/____.

(3) There is a surplus remaining after all sums are paid in the amount of $_____.

(4) Petitioner(s) is/are a party/parties to the foreclosure case and has/have filed an appearance in the case.

(5) Petitioner's/Petitioners' interest in the property is (select one, and attach any supporting documents): Owner(s)/Mortgagor(s); Judgment Creditor; Lien Holder; Other (please specify):_____.

(6) If Petitioner(s) is/are not the Mortgagor(s), judgment for the Petitioner(s) has been proved up in the amount of $_____.

(7) Pick one:

◯ Petitioner(s) has/have a bankruptcy case pending in Bankruptcy Court and has/have ATTACHED a copy of the order from the Bankruptcy Court allowing receipt of the surplus funds ("Order Authorizing Distribution of Surplus Funds").

◯ Petitioner(s) DOES NOT/DO NOT have a bankruptcy case pending in Bankruptcy Court.

Wherefore, the Petitioner(s), _____, move this Court to turn over to him/her/them the surplus from the foreclosure sale.

I/We, _____, enter my/our appearance(s), *pro se*:

Signature _____

Signature _____

VERIFICATION AND PROOF OF SERVICE

I/We certify under penalty of perjury as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, that I/we have read the foregoing Verified Petition for Turnover of Surplus Funds and the statements set forth therein are true and correct and that I sent a copy of this Appearance and Answer by United States mail to the Plaintiff's attorney and any other parties who have appeared and have not heretofore been found by the Court to be in default, on _____, 20__.

~~Signature~~ _____

~~Signature~~ _____

(i) Deceased Mortgagors. In all mortgage foreclosure cases where the mortgagor or mortgagors is or are deceased, and no estate has been opened for the deceased mortgagor(s), the court shall, on motion of a party, appoint a special representative to stand in the place of the deceased mortgagor(s) who shall act in a manner similar to that provided by section 13-209 of the Illinois Code of Civil Procedure (735 ILCS 5/13-209).

Adopted Feb. 22, 2013, eff. May 1, 2013; amended Apr. 8, 2013, eff. May 1, 2013; amended Dec. 29, 2017, eff. Jan. 1, 2018.

~~COMMITTEE COMMENTS~~Committee Comments

(February 22, 2013)

On April 11, 2011, the Illinois Supreme Court created the Special Supreme Court Committee on Mortgage Foreclosures and charged it with the following tasks: investigating the procedures used throughout the State of Illinois in mortgage foreclosure proceedings; studying relevant Illinois Supreme Court Rules and local rules that directly or indirectly affect such proceedings; analyzing the procedures adopted in other states in response to the unprecedented number of foreclosure filings nationwide; and reviewing legislative proposals pending in the Illinois General Assembly that may impact the mortgage foreclosure rules for the state. To meet this charge, the Committee established subcommittees, one of which was the Practice and Procedures Subcommittee. The Practice and Procedures Subcommittee submitted proposals for changes to the practice and procedures for mortgage foreclosure cases for discussion at a public hearing held on April 27, 2012. After consideration of comments and discussion at the public hearing, the Committee proposed this new rule governing mortgage foreclosure practice and procedure.

Paragraph (b) is derived from the need to address evidentiary issues that often arise during the course of a mortgage foreclosure. The new requirement to attach a copy of the note, as it currently exists with all indorsements and allonges, supplements the Illinois Mortgage Foreclosure Law to provide this necessary document to the defendant and the court at the outset. Including this additional document will prevent unnecessary delays caused by motion practice and discovery often used by defendants.

In drafting this section of the rule, the Committee took into consideration the positions of both the judiciary and comments provided at the public hearing regarding attaching a copy of all assignments to the complaint. The Committee members recognized that with the increase in transfers of mortgages and notes, Illinois courts have seen a dramatic increase in assertions by mortgagors that the mortgagee lacks standing to bring the foreclosure complaint. Quite often, mortgagors who ignore the judicial process until after a foreclosure or sale has occurred have raised standing issues as a defense, but have been told that their claim was forfeited by the failure to raise it in a timely manner. The Committee considered that as a matter of judicial economy, requiring that all executed assignments of the mortgage be attached at the time of filing could provide current documentation at the outset to all defendants and the circuit court demonstrating how the plaintiff has standing to file the complaint. However, due to industry changes in the documentation requirements for mortgage assignments over the past two decades, a requirement to attach all copies of assignments to the complaint at the time of filing proved to be impractical and overly burdensome for practitioners given the current volume of foreclosures statewide. This rule does not prohibit the attachment of such assignments should a plaintiff choose to do so. This rule also does not preclude the requirement of submission of all assignments at a later date in the litigation should the appropriate issues present themselves and presentation of the documents to the court and litigants becomes necessary.

Paragraph (c) addresses some of the many issues that arise from document handling procedures by lenders and servicers. Illinois courts, along with courts nationwide, have faced issues relating to "robo-signing" practices at major lenders, where affidavits were not properly notarized or where the affiant did not actually review any of the pertinent loan records. In addition to questionable document handling procedures, circuit

courts have dealt with prove-up affidavits that come in varied forms, many of which do not properly address the foundational requirements necessary for establishing the accuracy of computerized business records nor the correct amount due and owing under the mortgage and note. Paragraph (c)(2) identifies the minimum requirements necessary for a prove-up affidavit submitted by the mortgagee for entry of a judgment of foreclosure and Form 1 gives a form affidavit that should be used.

No judgment of foreclosure will be entered without compliance with Paragraph (c). However, Form 1 establishes only the amounts due and owing on the borrower's loan. Paragraph (c)(2) and Form 1 do not relieve the foreclosing party from establishing other evidentiary requirements, as necessary, in connection with proving the allegations contained in its complaint including, but not limited to, the party's right to enforce the instrument of indebtedness, if applicable.

Paragraph (d) addresses the desire of the Illinois courts to have adequate assurance that the mortgagor is sufficiently notified when an order of default and a judgment of foreclosure are entered against the mortgagor. Many mortgagors ignore court notices, believing that they are in error because their lender is negotiating with them for a loan modification. Other mortgagors have been told by servicers that their foreclosure case is on hold, but the servicer has not told the plaintiff's attorneys to place the file on hold. Currently, many circuit court clerks send a generic postcard that notifies any defendant, who has an appearance on file, of entry of a default order. Thus, if the mortgagor has not filed an appearance, the mortgagor may not receive notice of the default order from the clerk. The post card may not contain any helpful information that the defendant can understand. Likewise, notice of the default order is not mailed to the property address as a matter of course. While section 2-1302 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1302) requires that a plaintiff give notice of entry of a default order to be sent to all parties against whom the order applies, failure to give such notice does not affect the validity of the order. As a result, a mortgagor may not receive notice of entry of the default order from either the Clerk of the Circuit Court or the mortgagee's counsel.

Paragraph (d) addresses this deficiency in the notification process and requires the mortgagee's counsel to prepare a specific "Notice of Entry of Default and Judgment of Foreclosure" (Form 2). Counsel for the plaintiff must prepare this notice for the property address or any other address where the defendant is most likely to receive it. A defendant may have filed an appearance or another court paper that would indicate an address that may be different from the address of service of summons and different from the property address. By preparing this notice, and having the Clerk of the Circuit Court mail the notices, any undeliverable mail will remain in the court file and defaulted mortgagors will receive a clearer notice of the order and the judgment of foreclosure than they do currently.

Paragraph (f) addresses two issues relating to judicial sales that have become substantial problems throughout the state. Paragraph (f)(1) attempts to provide adequate notice to those mortgagors who are about to lose their home. Currently, the Illinois Mortgage Foreclosure Law does not specify that a separate notice of the sale be sent to defaulted defendants, and assumes that the publication requirements are adequate for those that have not otherwise participated in the foreclosure proceedings. See 735 ILCS 5/15-1507(c)(3) (lacking a specific requirement that a separate notice of sale be sent to a defaulted mortgagor). However, in many residential cases, a lack of participation, for any reason, results in a lack of notice of the sale to the mortgagor living in the property being foreclosed. That lack of notice often results in the mortgagor learning about the sale on the eve of the sale and filing an emergency motion to stay the sale. In cases where the mortgagor finds out about the sale from a notice of confirmation of sale or through the sheriff's notice of eviction, the courts then must hear motions to vacate the sale and motions to stay possession. See 735 ILCS 5/15-1508(b-5) (requiring notice of confirmation of sale be sent to a defaulted mortgagor). Many of these motions could be avoided and judicial efficiency increased if all parties, including defaulted parties, are given notice of the sale. Accordingly, paragraph (f)(1) implements a new notice requirement to supplement section 15-1507(c)(3) by mandating a separate notice to a defaulted mortgagor presale while also complementing section 15-1508(b-5) that requires notice postsale for confirmation.

Paragraph (f)(2) addresses the selling officer. Currently, section 15-1506(f)(3) of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1506(f)(3)) allows, by special motion, an official other than the one customarily designated by a court to be appointed to conduct judicial sales. The Committee recognized that

the customarily appointed selling officer is the sheriff in many counties statewide, section 15-1506 allows a court to appoint a private selling officer upon motion. Given the high volume of foreclosures throughout the state, many sales are being held nearly a year after the expiration of the redemption period. In some cases, this is due to the failure of the sheriff to promptly obey the court order commanding him to sell the property at auction. Accordingly, the loan accrues late fees and increased interest charges. These additional charges do not benefit any party to the foreclosure and do not help the communities if the property remains vacant during that idle period. In order to correct these deficiencies in the process, the Committee recommended that a rule be enacted that expressly allows the use of private selling officers throughout the state. In many instances, private selling officers have lower costs with the capacity and ability to conduct a sale in a timely manner that prevents the accrual of additional fees and facilitates the rehabilitation of properties into valuable components of neighborhoods.

Paragraph (g) implements a specific notification process for informing mortgagors about the existence of surplus funds resulting from a judicial sale. Currently, many clerks of the circuit courts are holding unclaimed surplus funds from judicial sales. Due to the lack of notice, these funds remain unclaimed. Paragraph (g) implements a specific "Special Notice of Surplus Funds" (Form 3) that the plaintiff's counsel must send to the mortgagors and paragraph (h) includes a specific motion (Form 4) that can be completed by the mortgagors for presentment to the court without an attorney. This paragraph is intended to facilitate the ability of mortgagors to claim those funds to which they may be entitled.

Paragraph (i) addresses the issue of a deceased mortgagor and the subject matter jurisdiction issues addressed in *ABN Amro Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526 (2010), which have not been specifically addressed by remedial legislation.

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Rule 114. Loss Mitigation Affidavit

(a) Loss Mitigation. For all actions filed under the Illinois Mortgage Foreclosure Law, and where a mortgagor has appeared or filed an answer or other responsive pleading, Plaintiff must, prior to moving for a judgment of foreclosure, comply with the requirements of any loss mitigation program which applies to the subject mortgage loan.

(b) Affidavit Prior to or at the Time of Moving for a Judgment of Foreclosure. In order to document the compliance required by paragraph (a) above, Plaintiff, prior to or at the time of moving for a judgment of foreclosure, must file an affidavit specifying:

(1) Any type of loss mitigation which applies to the subject mortgage;

(2) What steps were taken to offer said type of loss mitigation to the mortgagor(s); and

(3) The status of any such loss mitigation efforts.

(c) Form of Affidavit. The form of the affidavit shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.~~as set forth below in Form 1, or shall be in a form specified by amendment to this rule, but, in any case, shall contain the information set forth in paragraph (b) above.~~

~~**Form 1**~~

~~IN THE CIRCUIT COURT OF THE ____ JUDICIAL CIRCUIT~~

~~FOR _____ COUNTY, ILLINOIS~~

-

-

_____)
Plaintiff(s))
v.) Case. No. _____
_____)
Defendant(s))

LOSS MITIGATION AFFIDAVIT

I, [name] , hereby state as follows:

(1) I am employed as [job title] of [name] , the mortgagee as defined in section 15-1208 of the Illinois Mortgage Foreclosure Law for the residential mortgage loan that is the subject of the pending foreclosure case, and I am authorized to act on behalf of plaintiff.

(2) With respect to the subject mortgage loan, my employer is the appropriate entity to extend loss mitigation, if any, to the mortgagor(s), as defined in Section 15-1209 of the Illinois Mortgage Foreclosure Law.

(3) I have performed or caused to be performed a review of the records maintained in the ordinary course of the business of my employer relating to the subject mortgage loan, and based upon that review:

(a) The subject mortgage loan is eligible for the following loss mitigation programs [1] :

_____
_____
_____
_____

(b) For each of the programs listed above in 3(a), the following steps have been taken by the mortgagee to comply with its obligations under such program:

_____
_____
_____
_____

(c) For each of the programs listed above in 3(a), the current status of loss mitigation effort is as follows:

_____
_____
_____
_____

(4) The above is true and accurate to the best of my personal knowledge and based upon my review of the records as set forth above.

Affiant states nothing more.

BY: _____
AFFIANT

Subscribed and sworn to before me this
_____ day of _____, 20___
by _____.
_____
Notary Public

~~State of [name]~~

~~My Commission expires: _____, 20___~~

~~Personally Known _____ **OR** Produced Identification _____.~~

~~Type of Identification Produced: _____.~~

~~[1]Identify here all applicable loss mitigation programs including but not limited to those available under the Making Home Affordable Program, the 2012 National Attorney General Settlement, or the FHA, VA, or USDA insured-loan programs. Also identify any "in-house" loss mitigation regularly provided by the mortgagee for a mortgage loan of this type. "Eligible" means the loan is eligible to be considered under such programs because it meets the threshold requirements; eligible does not mean that a loss mitigation alternative to foreclosure is guaranteed.~~

(d) Enforcement. The court may, either *sua sponte* or upon motion of a mortgagor, stay the proceedings or deny entry of a foreclosure judgment if Plaintiff fails to comply with the requirements of this rule.

Adopted Feb. 22, 2013, eff. May 1, 2013; amended Apr. 8, 2013, eff. May 1, 2013; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

(April 8, 2013)

The context out of which Rule 114 arises is the huge increase in the number of foreclosure cases filed in the Illinois state courts. It is recognized by all members of the Committee that, wherever possible, it is in the best interests of all parties, the courts, and the local communities to avoid a foreclosure sale in favor of a workable loss mitigation alternative. Toward this end, Rule 114 requires the plaintiff to file an affidavit to document compliance with any loss mitigation program applicable to the mortgage loan at issue. The affidavit must be filled out and filed prior to or at the time of moving for a judgment of foreclosure. As such, the intended purpose of the rule is to prevent the entry of a judgment of foreclosure where the plaintiff has theretofore failed to comply with applicable loss mitigation requirements, be they local, state, or federal. The filing of the affidavit allows the court to review the plaintiff's level of compliance with applicable loss mitigation requirements, and, if necessary, to deny a motion for judgment of foreclosure if said compliance is lacking.

Specific procedures for filing and presenting the affidavit to the court may differ from county to county. Where counties have mediation programs in place, it is advisable that the county adopt procedures to incorporate the loss mitigation affidavit into the mediation process. Where no mediation program is in place, or where an individual case is not subject to mediation, the county and individual courts should consider appropriate local procedures to facilitate the use of the affidavit in achieving its intended purpose. The affidavit requirement is intended to apply to all judgments on or after the effective date of the rule, no matter the foreclosure filing date. Because the affidavit must be filed prior to the entry of a foreclosure judgment, the effective date requires application to any case where a judgment of foreclosure has not yet been entered. Thus, although a case may already have been filed prior to the effective date of Rule 114, the Rule would apply if a judgment of foreclosure has not yet been entered.

Rules 115-130. Reserved

Rule 131. Form of Documents ~~Papers~~

(a) Legibility. All documents ~~and copies thereof~~ for filing and service shall be legibly written, typewritten, printed, or otherwise prepared. ~~duplicated.~~ The clerk may reject any documents ~~shall not file any~~ which do not conform to this rule.

(b) Titles. All documents shall be entitled in the court and cause, and the plaintiff's name shall be placed first.

(c) Multiple Parties. In cases in which there are two or more plaintiffs or two or more defendants, it is sufficient in entitling documents, except a summons, to name the first-named plaintiff and the first-named defendant with the usual indication of other parties, provided there be added the official number of the cause.

(d) Name, Address, Telephone Number~~, Facsimile Number~~ and E-mail Address.

(1) Attorneys. All documents filed or served in any cause by an attorney upon another party shall bear the attorney's name, business address, e-mail address, and telephone number. The attorney must designate a primary e-mail address and may designate no more than two secondary e-mail addresses.

(2) Unrepresented Parties. All documents filed or served in any cause by an unrepresented party upon another party shall bear the unrepresented party's mailing address and telephone number. Additionally, an unrepresented party may designate a single e-mail address to which service may be directed under Rule 11~~(b)(6)~~. If an unrepresented party does not designate an e-mail address, then service upon and by that party must be made by a method specified in Rule 11 other than e-mail transmission ~~under Rule 11(b)(6)~~.

~~**(3) All parties.** If the attorney or unrepresented party will accept service by facsimile transmission, then the document shall also bear the statement "Service by facsimile transmission will be accepted at [facsimile telephone number]."~~

Amended February 19, 1982, effective April 1, 1982; amended October 30, 1992, effective November 15, 1992; amended Dec. 21, 2012, eff. Jan. 1, 2013; amended Jan. 4, 2013, eff. immediately; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

(Revised February 1982)

In 1982 the rule, which was former Rule 6 without change of substance, was amended to require that all papers filed or served had to bear the name, as well as the address and telephone number, of the responsible attorney or attorneys and law firm filing them.

Rule 132. Designation of Cases

Every complaint or other ~~paper~~ document initiating any civil action or proceeding shall contain in the caption the words "at law," "in chancery," "in probate," "small claim," or other designation conforming to the organization of the circuit court into divisions. Misdesignation shall not affect the jurisdiction of the court.

Amended Jan. 4, 2013, eff. immediately.

Committee Comments

This is former Rule 9(1) without change of substance.

Rule 133. Pleading Breach of Statutory Duty; Judgment or Order; Breach of Condition Precedent

(a) Statutory Duty. If a breach of statutory duty is alleged, the statute shall be cited in connection with the allegation.

(b) Judgment or Order. In pleading a judgment or order of any State or Federal court or the decision of any State or Federal officer or board of special jurisdiction, it is sufficient to state the date of its entry, and describe its general nature and allege generally that the judgment or decision was duly given or made.

(c) Condition Precedent. In pleading the performance of a condition precedent in a contract, it is sufficient to allege generally that the party performed all the conditions on his part; if the allegation be denied, the facts must be alleged in connection with the denial showing wherein there was a failure to perform.

Committee Comments

This is former Rule 13 without change of substance.

Rule 134. Incorporation of Pleadings by Reference

If facts are adequately stated in one part of a pleading, or in any one pleading, they need not be repeated elsewhere in the pleading, or in the pleadings, and may be incorporated by reference elsewhere or in other pleadings.

Committee Comments

This is former Rule 11--1.

Rule 135. Pleading Equitable Matters

(a) Single Equitable Cause of Action. Matters within the jurisdiction of a court of equity, whether directly or as an incident to other matters before it, or which an equity court can hear so as to do complete justice between the parties, may be regarded as a single equitable cause of action and when so treated as a single cause of action shall be pleaded without being set forth in separate counts and without the use of the term "count."

(b) Joinder of Legal and Equitable Matters. When actions at law and in chancery that may be prosecuted separately are joined, the party joining the actions may, if he desires to treat them as separate causes of action, plead them in distinct counts, marked respectively "separate action at law" and "separate action in chancery." This paragraph applies to answers, counterclaims, third-party claims, and any other pleadings wherever legal and equitable matters are permitted to be joined under the Civil Practice Law.

Amended May 28, 1982, effective July 1, 1982.

Committee Comments

This rule contains the pleading provisions of former Rules 10 and 11 without change in substance. The provisions of those rules relating to trial appear in new Rule 232.

Rule 136. Denials

(a) Form of Denials. If a pleader can in good faith deny all the allegations in a paragraph of the opposing party's pleading, or all the allegations in the paragraph that are not specifically admitted, he may do so without paraphrasing or separately describing each allegation denied.

(b) Pleadings after Reply. Unless the court orders otherwise, no response to a reply or subsequent pleading is required and any new matter in a reply or subsequent pleading shall be taken as denied.

Committee Comments

Paragraph (a)

This provision is new. It is designed to clarify section 40 of the Illinois Civil Practice Act.

When several allegations in a paragraph are to be denied, the responsive pleading may be more intelligible if they are identified without a paraphrase or separate description of each one. Doubt has been cast on this method of pleading by *Johnson v. Schuberth*, 40 Ill. App. 2d 467, 189 N.E.2d 768 (1st Dist. 1963). Compare, however, *Dennehy v. Wood Co.*, 285 Ill. App. 598, 2 N.E.2d 586 (2d Dist. Abst. Op. 1936).

The new rule permits pleading substantially as in the following illustration:

"5. Defendant denies the allegations of paragraph 5 of the complaint and each of them."

Or, if some of the allegations of a paragraph are to be admitted and some denied, the pleader may state substantially as follows:

"5. Defendant admits [stating facts admitted] and denies the remaining allegations of paragraph 5 and each of them."

The new rule is based in part upon provisions in Rule 8(b) of the Federal Rules of Civil Procedure. See also 2 Moore, Federal Practice, par. 8.23 (2d ed. 1965). Unlike the Federal rule, however, the new rule does not permit a general denial of an entire pleading, even in the very unusual case in which such a denial would be appropriate. Not only does section 40 of the Civil Practice Act forbid this result, but the disciplinary effect of requiring the pleader to address himself separately to each paragraph and allegation therein is highly desirable and should be preserved.

Paragraph (b)

Paragraph (b), an express statement of what the committee believes to be the existing rule, is based upon Rule 8(d) of the Federal Rules of Civil Procedure.

Rule 137. Signing of Pleadings, Motions and Other Documents—Sanctions

(a) Signature requirement/certification. Every pleading, motion and other document of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other document and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or

other document is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other document, including a reasonable attorney fee.

(b) Procedure for Alleging Violations of This Rule. All proceedings under this rule shall be brought within the civil action in which the pleading, motion or other document referred to has been filed, and no violation or alleged violation of this rule shall give rise to a separate civil suit, but shall be considered a claim within the same civil action. Motions brought pursuant to this rule must be filed within 30 days of the entry of final judgment, or if a timely post-judgment motion is filed, within 30 days of the ruling on the post-judgment motion.

(c) Applicability to State Entities and Review of Administrative Determinations. This rule shall apply to the State of Illinois or any agency of the State in the same manner as any other party. Furthermore, where the litigation involves review of a determination of an administrative agency, the court may include in its award for expenses an amount to compensate a party for costs actually incurred by that party in contesting on the administrative level an allegation or denial made by the State without reasonable cause and found to be untrue.

(d) Required Written Explanation of Imposition of Sanctions. Where a sanction is imposed under this rule, the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order.

(e) Attorney Assistance Not Requiring an Appearance or Signature. An attorney may assist a self-represented person in drafting or reviewing a pleading, motion, or other document ~~paper~~ without making a general or limited scope appearance. Such assistance does not constitute either a general or limited scope appearance by the attorney. The self-represented person shall sign the pleading, motion, or other paper. An attorney providing drafting or reviewing assistance may rely on the self-represented person's representation of facts without further investigation by the attorney, unless the attorney knows that such representations are false.

Adopted June 19, 1989, effective August 1, 1989; amended December 17, 1993, effective February 1, 1994; amended Jan. 4, 2013, eff. immediately; amended June 14, 2013, eff. July 1, 2013; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

(June 14, 2013)

Under Illinois Rule of Professional Conduct 1.2(c), an attorney may limit the scope of a representation if the limitation is reasonable under the circumstances and the client gives informed consent. Such a limited scope representation may include providing advice to a party regarding the drafting of a pleading, motion or other paper, or reviewing a pleading, motion or other paper drafted by a party, without filing a general or limited scope appearance. In such circumstances, an attorney is not required to sign or otherwise note the attorney's involvement and the certification requirements in Rule 137 are inapplicable. Moreover, even if an attorney is identified in connection with such a limited scope representation, the attorney will not be deemed to have made a general or limited scope appearance.

Consistent with the limited scope of services envisioned under this drafting and reviewing function, attorneys may rely on the representation of facts provided by the self-represented person. This rule applies, for example, to an attorney who advises a caller to a legal aid telephone hotline regarding the completion of a form pleading, motion or other paper or an attorney providing information at a pro bono clinic.

All obligations under Rule 137 with respect to signing pleadings and certifications apply fully in those limited scope representations where an attorney has filed a general or limited scope appearance. Drafting a pleading, motion or other paper, or reviewing a pleading, motion or paper drafted by a party does not establish any independent responsibility not already applicable under current law.

Commentary

(December 17, 1993)

The rule is modified to clarify when motions for sanctions must be filed.

Committee Comments

(August 1, 1989)

The Supreme Court has adopted Rule 137, effective August 1, 1989. Rule 137 will require all pleadings and papers to be signed by an attorney of record or by a party, if the party is not represented by an attorney, and (treating such signature as a certification that the paper has been read, that after reasonable inquiry it is well-grounded in fact and law, and that it is not interposed for any improper purpose, etc.) the rule authorizes the trial courts to impose certain sanctions for violations of the rule. Rule 137 preempts all matters sought to be covered by section 2-611 of the Code of Civil Procedure. Unlike section 2-611, Rule 137 allows but does not require the imposition of sanctions. Unlike section 2-611, Rule 137 requires a trial judge who imposes sanctions to set forth with specificity the reasons and basis of any sanction in a separate written order. Unlike section 2-611, Rule 137 does not make special provisions concerning the potential exposure to sanctions of insurance companies that might employ attorneys.

Rule 138. Personal Identity Information

(a) Applicability.

(1) In civil cases, personal identity information shall not be included in documents or exhibits filed with the court except as provided in paragraph (c). ~~This rule applies to paper and electronic filings.~~

(2) This rule does not apply to cases filed confidentially and not available for public inspection.

(b) Personal identity information, for purposes of this rule, is defined as follows:

(1) Social Security and individual taxpayer-identification numbers;

(2) driver's license numbers;

(3) financial account numbers; and

(4) debit and credit card numbers.

A court may order other types of information redacted or filed confidentially, consistent with the purpose and procedures of this rule.

(c) A redacted filing of personal identity information for the public record is permissible and shall only include:

(1) the last four digits of the Social Security or individual taxpayer-identification number;

(2) the last four digits of the driver's license number;

(3) the last four digits of the financial account number; and

(4) the last four digits of the debit and credit card number.

When the filing of personal identity information is required by law, ordered by the court, or otherwise necessary to effect disposition of a matter, the party shall file a ~~form in substantial compliance with the appended~~ "Notice ~~Of~~of Confidential Information Within Court Filing~~,~~" prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix. This document shall contain the personal identity information in issue~~,~~ and shall be impounded by the clerk immediately upon

filing. Thereafter, the document and any attachments thereto shall remain impounded and be maintained as confidential, except as provided in paragraph (d) or as the court may order.

After the initial impounded filing of the personal identity information, subsequent documents filed in the case shall include only redacted personal identity information with appropriate reference to the impounded document containing the personal identity information.

If any of the impounded personal identity information in the initial filing subsequently requires amendment or updating, the responsible party shall file the amended or additional information by filing a separate "Notice Of Confidential Information Within Court Filing" form.

(d) The information provided with the "Notice of Confidential Information Within Court Filing" shall be available to the parties, to the court, and to the clerk in performance of any requirement provided by law, including the transfer of such information to appropriate justice partners, such as the sheriff, guardian *ad litem*, and the State Disbursement Unit (SDU), the Secretary of State or other governmental agencies, and legal aid agencies or bar association *pro bono* groups. In addition, the clerk, the parties, and the parties' attorneys may prepare and provide copies of documents without redaction to financial institutions and other entities or persons which require such documents.

(e) Neither the court nor the clerk is required to review documents or exhibits for compliance with this rule. If the clerk becomes aware of any noncompliance, the clerk may call it to the court's attention. The court, however, shall not require the clerk to review documents or exhibits for compliance with this rule.

(f)(1) If a document or exhibit is filed containing personal identity information, a party or any other person whose information has been filed may move that the court order redaction and confidential filing as provided in paragraph (b). The motion shall be impounded, and the clerk shall remove the document or exhibit containing the personal identity information from public access pending the court's ruling on the substance of the motion. A motion requesting redaction of a document in the court file shall have attached a copy of the redacted version of the document. If the court allows the motion, the clerk shall retain the unredacted copy under impoundment and the redacted copy shall become part of the court record.

(2) If the court finds the inclusion of personal identity information in violation of this rule was willful, the court may award the prevailing party reasonable expenses, including attorney fees and court costs.

(g) This rule does not require any clerk or judicial officer to redact personal identity information from the court record except as provided in this rule.

Adopted Oct. 24, 2012, eff. July 1, 2013; amended June 3, 2013, eff. July 1, 2013; amended June 27, 2013, eff. July 1, 2013; amended Dec. 24, 2013, eff. Jan. 1, 2014; amended May 29, 2014, eff. immediately; amended Nov. 21, 2014, eff. immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

October 24, 2012

(Revised June 3, 2013)

(Revised December 24, 2013)

(Revised May 29, 2014)

Paragraph (a)

Supreme Court Rule 138, adopted October 24, 2012, prohibits the filing of personal identity information that could be used for identity theft. For instance, financial disclosure statements used in family law cases typically contain a variety of personal information that shall remain confidential to protect privacy concerns.

Paragraph (b)

While paragraph (b) defines the most common types of personal identity information, it further allows the court to order redaction or confidential filing of other types of information as necessary to prevent identity

theft.

Paragraph (c)

The procedures in paragraph (c) address the filing of personal identity information in redacted form for the public record. Where the personal identity information is required by law, ordered by the court, or otherwise necessary to effect a disposition of a matter, the litigant shall file the document in redacted form and separately file the subject personal identity information in a protected document titled a "Notice of Confidential Information Within Court Filing," using the appended form. The filing of a separate document without redaction is not necessary or required because the personal identity information will be available to authorized persons by referring to the "Notice of Confidential Information Within Court Filing" form.

Paragraph (d)

The clerk of court can utilize personal identity information and share that information with other agencies, entities and individuals, as provided by law.

[Appendix]

In the Circuit Court of the _____ Judicial Circuit,
_____ County, Illinois
(Or, In the Circuit Court of Cook County, Illinois)

_____
Plaintiff/Petitioner,

v.

_____
Defendant/Respondent

NOTICE OF CONFIDENTIAL INFORMATION WITHIN COURT FILING

Pursuant to Illinois Supreme Court Rule 138(c), the filer of a document containing personal identity information required by law, ordered by the court, or otherwise necessary to effect disposition of a matter shall, at the time of such filing, include this confidential information form which identifies the personal identity information redacted from such filing pursuant to Rule 138(c), and which will be redacted from future filings to protect the subject personal identity information. **This personal identity information will not be available to the public and this document will be stored in a separate location from the case file.**

Party/Individual Information:

1. Name: _____
Address: _____
_____
Phone: _____
SSN: _____

Other personal identity information as defined in Rule 138(b), to the extent applicable: _____

2. Name: _____
Address: _____
_____
Phone: _____
SSN: _____

Other personal identity information as defined in Rule 138(b), to the extent applicable: _____

_____ (Attach additional pages, if necessary.)

Rules 139-180. Reserved

PART C. APPEARANCES AND TIME FOR ANSWERS, REPLIES, AND MOTIONS

Rule 181. Appearances--Answers--Motions

(a) When Summons Requires Appearance Within 30 Days After Service. When the summons requires appearance within 30 days after service, exclusive of the day of service (see Rule 101(d)), the 30-day period shall be computed from the day the copy of the summons is left with the person designated by law and not from the day a copy is mailed, in case mailing is also required. The defendant may make his or her appearance by filing a motion within the 30-day period, in which instance an answer or another appropriate motion shall be filed within the time the court directs in the order disposing of the motion. If the defendant's appearance is made in some other manner, nevertheless his or her answer or appropriate motion shall be filed on or before the last day on which he or she was required to appear.

(b) When Summons Requires Appearance on Specified Day.

(1) *Actions for Money.* Unless the "Notice to Defendant" (see Rule 101(b)) provides otherwise, an appearance in a civil action for money in which the summons requires appearance on a specified day may be made by appearing in person or by attorney at the time and place specified in the summons and making the appearance known to the court, or before the time specified for appearance by filing a written appearance, answer, or motion, in person or by attorney. The written appearance, answer, or motion shall

~~state with particularity the address where service of notice or documents may be made upon the party or attorney so appearing.~~ When a defendant appears in open court, the court shall require him to enter an appearance in writing. When an appearance is made in writing otherwise than by filing an answer or motion, the defendant shall be allowed 10 days after the day for appearance within which to file an answer or motion, unless the court, by rule or order, otherwise directs.

(2) *Forcible Detainer Actions.* In actions for forcible detainer (see Rule 101(b)), the defendant must appear at the time and place specified in the summons. If the defendant appears, he or she need not file an answer unless ordered by the court; and when no answer is ordered, the allegations of the complaint will be deemed denied, and any defense may be proved as if it were specifically pleaded.

(3) *Small Claims.* Appearances in small claims (actions for money not in excess of $10,000) are governed by Rule 286.

Amended October 21, 1969, effective January 1, 1970; amended December 3, 1996, effective January 1, 1997; amended February 10, 2006, effective immediately; amended Jan. 4, 2013, eff. immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

This rule consists of paragraphs (1) and (2) of former Rule 8 without change of substance.

Rule 182. Time for Pleadings and Motions Other Than Those Directed to Complaint

(a) Replies. Replies to answers shall be filed within 21 days after the last day allowed for the filing of the answer. Any subsequent pleadings allowed or ordered shall be filed at such time as the court may order.

(b) Responding to Counterclaims. Answers to and motions directed against counterclaims shall be filed by parties already before the court within 21 days after the last day allowed for the filing of the counterclaim.

(c) Motions. A motion attacking a pleading other than the complaint must be filed within 21 days after the last day allowed for the filing of the pleading attacked.

Committee Comments

This rule consists of paragraphs (3) and (4) of former Rule 8 divided into three paragraphs. Twenty days is changed to 21 days.

Rule 183. Extensions of Time

~~This~~ The court, for good cause shown on motion after notice to the opposite party, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time.

Corrected February 16, 2011, effective immediately.

Committee Comments

This is paragraph (5) of former Rule 8 without change in substance.

Rule 184. Hearings on Motions

No provision in these rules or in the Civil Practice Law prescribing a period for filing a motion requires that the motion be heard within that period. Either party may call up the motion for disposition before or after the expiration of the filing period.

Amended May 28, 1982, effective July 1, 1982.

Committee Comments

This is a revision of paragraph (6) of former Rule 8 without change except for the specific reference to the Civil Practice Act.

Rule 185. Telephone or Video Conferences

Except as may be otherwise provided by rule of the circuit court, the court may, at a party's request, direct argument of any motion or discussion of any other matter remotely, including by telephone or video conference ~~without a court appearance~~. The court may further direct which party shall pay any ~~the~~ cost associated with the remote session.~~of the telephone calls.~~

Adopted April 1, 1992, effective August 1, 1992; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

This rule was adopted as part of a package of measures to increase the use of electronic and telephonic technology and to simplify and make more efficient motion and conference practices. The availability of this alternative procedure may be modified by local rule, inasmuch as telephone conferencing may not be the most efficient way to handle motions, etc., in some circuits or counties.

Rule 186. Reserved

Rule 187. Motions on Grounds of Forum Non Conveniens

(a) Time for Filing. A motion to dismiss or transfer the action under the doctrine of *forum non conveniens* must be filed by a party not later than 90 days after the last day allowed for the filing of that party's answer.

(b) Proceedings on motions. Hearings on motions to dismiss or transfer the action under the doctrine of *forum non conveniens* shall be scheduled so as to allow the parties sufficient time to conduct discovery on

issues of fact raised by such motions. Such motions may be supported and opposed by affidavit. In determining issues of fact raised by affidavits, any competent evidence adduced by the parties shall also be considered. The determination of any issue of fact in connection with such a motion does not constitute a determination of the merits of the case or any aspect thereof.

(c) Proceedings upon granting of motions.

(1) *Intrastate transfer of action.* The clerk of the court from which a transfer is granted to another circuit court in this State on the ground of *forum non conveniens* shall immediately certify and transmit to the clerk of the court to which the transfer is ordered the ~~originals of all~~ documents filed in the case ~~together with copies of~~ and all orders entered therein. ~~In the event of a severance, certified copies of documents filed and orders entered shall be transmitted.~~ The clerk of the court to which the transfer is ordered shall file the documents and transcript transmitted to him or her and docket the case, and the action shall proceed and be determined as if it had originated in that court. The costs attending a transfer shall be taxed by the clerk of the court from which the transfer is granted, and, together with the filing fee in the transferee court, shall be paid by the party or parties who applied for the transfer.

(2) *Dismissal of action.* Dismissal of an action under the doctrine of *forum non conveniens* shall be upon the following conditions:

(i) if the plaintiff elects to file the action in another forum within six months of the dismissal order, the defendant shall accept service of process from that court; and

(ii) if the statute of limitations has run in the other forum, the defendant shall waive that defense.

If the defendant refuses to abide by these conditions, the cause shall be reinstated for further proceedings in the court in which the dismissal was granted. If the court in the other forum refuses to accept jurisdiction, the plaintiff may, within 30 days of the final order refusing jurisdiction, reinstate the action in the court in which the dismissal was granted. The costs attending a dismissal may be awarded in the discretion of the court.

Adopted February 21, 1986, effective August 1, 1986; amended Jan. 4, 2013, eff. immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

(February 21, 1986)

Rule 187 was adopted, effective August 1, 1986, to provide for the timely filing of motions on *forum non conveniens* grounds (see *Bell v. Louisville & Nashville R.R. Co.* (1985), 106 Ill. 2d 135), and to standardize the procedure governing interstate and intrastate *forum non conveniens* motions.

Paragraph (a)

Paragraph (a) calculates the period for filing a *forum non conveniens* motion from the last day allowed for the filing of that party's answer. (Compare Rule 182(a).) Paragraph (a) refers to "*that party's* answer" to insure that a later-joined defendant is not foreclosed from filing a *forum non conveniens* motion by the failure of another defendant to do so in a timely manner.

Paragraph (b)

Paragraph (b) requires that hearings on *forum non conveniens* motions be scheduled to allow the parties sufficient time to conduct discovery on factual issues raised by such motions. The trial court should exercise its discretion in determining how much time is sufficient.

Paragraph (c)

Paragraph (c)(1) establishes the procedure to be followed when a transfer to another Illinois county on

forum non conveniens grounds is granted. The procedures to be followed by the clerks of the transferee and transferor courts are similar to those in cases of transfer for wrong venue. See Section 2-106(b) of the Code of Civil Procedure. Attorney fees may not be awarded under this subparagraph.

Paragraph (c)(2) establishes two mandatory conditions to be placed on all dismissals on *forum non conveniens* grounds. If a defendant does not abide by those conditions, the cause is to be reinstated in the court in which the dismissal was granted. If the court in an appropriate forum refuses jurisdiction, the plaintiff has 30 days from the final order refusing jurisdiction to refile the action in the court in which the dismissal was granted. The awarding of costs is discretionary with the trial court. Attorney fees may not be awarded under this subparagraph.

Rules 188-190. Reserved

PART D. MOTIONS FOR SUMMARY JUDGMENTS AND EVIDENTIARY AFFIDAVITS

Rule 191. Proceedings Under Sections 2--1005, 2--619 and 2--301(b) of the Code of Civil Procedure

(a) Requirements. Motions for summary judgment under section 2-1005 of the Code of Civil Procedure and motions for involuntary dismissal under section 2-619 of the Code of Civil Procedure must be filed before the last date, if any, set by the trial court for the filing of dispositive motions. Affidavits in support of and in opposition to a motion for summary judgment under section 2-1005 of the Code of Civil Procedure, affidavits submitted in connection with a motion for involuntary dismissal under section 2-619 of the Code of Civil Procedure, and affidavits submitted in connection with a motion to contest jurisdiction over the person, as provided by section 2-301 of the Code of Civil Procedure, shall be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of all ~~papers~~ documents upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto. If all of the facts to be shown are not within the personal knowledge of one person, two or more affidavits shall be used.

(b) When Material Facts Are Not Obtainable by Affidavit. If the affidavit of either party contains a statement that any of the material facts which ought to appear in the affidavit are known only to persons whose affidavits affiant is unable to procure by reason of hostility or otherwise, naming the persons and showing why their affidavits cannot be procured and what affiant believes they would testify to if sworn, with his reasons for his belief, the court may make any order that may be just, either granting or refusing the motion, or granting a continuance to permit affidavits to be obtained, or for submitting interrogatories to or taking the depositions of any of the persons so named, or for producing ~~papers or~~ documents in the possession of those persons or furnishing sworn copies thereof. The interrogatories and sworn answers thereto, depositions so taken, and sworn copies of ~~papers and~~ documents so furnished, shall be considered with the affidavits in passing upon the motion.

Amended effective July 1, 1971; amended May 28, 1982, effective July 1, 1982; amended April 1, 1992, effective August 1, 1992; amended March 28, 2002, effective July 1, 2002; amended Jan. 4, 2013, eff. immediately.

SEE ADMINISTRATIVE ORDER ENTERED NOVEMBER 27, 2002

Committee Comments
(March 28, 2002)

The words "special appearance," which formerly appeared in paragraph (a) of Rule 191, were replaced in 2002 with the word "motion" in order to conform to changes in terminology in section 2–301 of the Code of Civil Procedure (735 ILCS 5/2–301

(West 1998)).

Committee Comments

This is former Rule 15, as it existed before 1964, without change in substance. Note that a discovery deposition or an answer to an interrogatory may be used as if it were an affidavit. (See Rules 212(a)(4) and 213(f).) Paragraph (a) of Rule 191 was amended in 1971 to make the rule applicable to affidavits submitted in connection with special appearances under section 20(2) of the Civil Practice Act to contest jurisdiction over the person.

Sections 2--1005(a) and 2--1005(b) of the Code of Civil Procedure (Ill. Rev. Stat. 1989, ch. 110, par. 2--1005) set time limits within which a plaintiff or a defendant may file motions for summary judgment. In 1992, paragraph (a) was amended to require that motions for summary judgment and motions for involuntary dismissal must be filed not later than the last date, if any, set by the court for the filing of dispositive motions.

Rule 192. Summary Judgments--Multiple Issues

When the entry of a summary judgment will not dispose of all the issues in the case, the court may, as the justice of the case shall require, either (1) allow the motion and postpone the entry of judgment thereon; (2) allow the motion and enter judgment thereon; or (3) allow the motion, enter judgment thereon, and stay the enforcement pending the determination of the remaining issues in the case. If a party resisting the entry of a summary judgment relies upon an affirmative demand against the moving party for an amount less than the latter's demand, judgment for the difference may be entered and enforced.

Committee Comments

This is former Rule 16 without change in substance.

Rules 193-200. Reserved

PART E. DISCOVERY, REQUESTS FOR ADMISSION, AND PRETRIAL PROCEDURE

Rule 201. General Discovery Provisions

(a) Discovery Methods. Information is obtainable as provided in these rules through any of the following discovery methods: depositions upon oral examination or written questions, written interrogatories to parties, discovery of documents, objects or tangible things, inspection of real estate, requests to admit and physical and mental examination of persons. Duplication of discovery methods to obtain the same information and discovery requests that are disproportionate in terms of burden or expense should be avoided.

(b) Scope of Discovery.

(1) *Full Disclosure Required.* Except as provided in these rules, a party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking disclosure or of any other party, including the existence, description, nature, custody, condition, and location of any documents or tangible things, and the identity and location of persons having knowledge of relevant facts. The word "documents," as used in Part E of Article II, includes, but is not limited to, papers, photographs, films, recordings, memoranda, books, records, accounts, communications and electronically stored information as defined in Rule 201(b)(4).

(2) *Privilege and Work Product.* All matters that are privileged against disclosure on the trial, including privileged communications between a party or his agent and the attorney for the party, are privileged against disclosure through any discovery procedure. Material prepared by or for a party in preparation for trial is subject to discovery only if it does not contain

or disclose the theories, mental impressions, or litigation plans of the party's attorney. The court may apportion the cost involved in originally securing the discoverable material, including when appropriate a reasonable attorney's fee, in such manner as is just.

(3) *Consultant.* A consultant is a person who has been retained or specially employed in anticipation of litigation or preparation for trial but who is not to be called at trial. The identity, opinions, and work product of a consultant are discoverable only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject matter by other means.

(4) *Electronically Stored Information.* ("ESI") shall include any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations in any medium from which electronically stored information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form.

(c) Prevention of Abuse.

(1) *Protective Orders.* The court may at any time on its own initiative, or on motion of any party or witness, make a protective order as justice requires, denying, limiting, conditioning, or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression.

(2) *Supervision of Discovery.* Upon the motion of any party or witness, on notice to all parties, or on its own initiative without notice, the court may supervise all or any part of any discovery procedure.

(3) *Proportionality.* When making an order under this Section, the court may determine whether the likely burden or expense of the proposed discovery, including electronically stored information, outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

(d) Time Discovery May Be Initiated. Prior to the time all defendants have appeared or are required to appear, no discovery procedure shall be noticed or otherwise initiated without leave of court granted upon good cause shown.

(e) Sequence of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery shall not operate to delay any other party's discovery.

(f) Diligence in Discovery. The trial of a case shall not be delayed to permit discovery unless due diligence is shown.

(g) Discovery in Small Claims. Discovery in small claims cases is subject to Rule 287.

(h) Discovery in Ordinance Violation Cases. In suits for violation of municipal ordinances where the penalty is a fine only no discovery procedure shall be used prior to trial except by leave of court.

(i) Stipulations. If the parties so stipulate, discovery may take place before any person, for any purpose, at any time or place, and in any manner.

(j) Effect of Discovery Disclosure. Disclosure of any matter obtained by discovery is not conclusive, but may be contradicted by other evidence.

(k) Reasonable Attempt to Resolve Differences Required. The parties shall facilitate discovery under these rules and shall make reasonable attempts to resolve differences over discovery. Every motion with respect to discovery shall incorporate a statement that counsel responsible for trial of the case after personal consultation and reasonable attempts to resolve differences have been unable to reach an accord or that opposing counsel made himself or herself unavailable for personal consultation or was unreasonable in attempts to resolve differences.

(l) Discovery Pursuant to Personal Jurisdiction Motion.

(1) While a motion filed under section 2-301 of the Code of Civil Procedure is pending, a party may obtain discovery only on the issue of the court's jurisdiction over the person of the defendant unless: (a) otherwise agreed by the parties; or (b) ordered by the court upon a showing of good cause by the party seeking the discovery that specific discovery is required on other issues.

(2) An objecting party's participation in a hearing regarding discovery, or in discovery as allowed by this rule, shall not

constitute a waiver of that party's objection to the court's jurisdiction over the person of the objecting party.

(m) Filing Materials with the Clerk of the Circuit Court. No discovery may be filed with the clerk of the circuit court except by order of court. Local rules shall not require the filing of discovery. Any party serving discovery shall file a certificate of service of discovery document. Service of discovery shall be made in the manner provided for service of documents in Rule 11.

(n) Claims of Privilege. When information or documents are withheld from disclosure or discovery on a claim that they are privileged pursuant to a common law or statutory privilege, any such claim shall be made expressly and shall be supported by a description of the nature of the documents, communications or things not produced or disclosed and the exact privilege which is being claimed.

(o) Filing of Discovery Requests to Nonparties. Notwithstanding the foregoing, a copy of any discovery request under these rules to any nonparty shall be filed with the clerk in accord with Rule 104(b).

(p) Asserting Privilege or Work Product Following Discovery Disclosure. If information inadvertently produced in discovery is subject to a claim of privilege or of work-product protection, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, each receiving party must promptly return, sequester, or destroy the specified information and any copies; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the receiving party disclosed the information to third parties before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must also preserve the information until the claim is resolved.

Amended effective September 1, 1974; amended September 29, 1978, effective November 1, 1978; amended January 5, 1981, effective February 1, 1981; amended May 28, 1982, effective July 1, 1982; amended June 19, 1989, effective August 1, 1989; amended June 1, 1995, effective January 1, 1996; amended March 28, 2002, effective July 1, 2002; amended Oct. 24, 2012, effective Jan. 1, 2013; amended Nov. 28, 2012, eff. Jan. 1, 2013; amended May 29, 2014, eff. July 1, 2014; July 30, 2014 corrected *nunc pro tunc* May 29, 2014 .

Committee Comments

(Revised May 29, 2014)

Paragraph (b)

Paragraph (b), subparagraph (1) was amended to conform with the definition in newly added paragraph (b), subparagraph (4) and complies with the Federal Rules of Civil Procedure.

Paragraph (b), subparagraph (4) was added to provide a definition of electronically stored information that comports with the Federal Rule of Civil Procedure 34 (a)(1)(a) and is intended to be flexible and expansive as technology changes.

Paragraph (c)

Subparagraph (3) was added to address the production of materials when benefits do not outweigh the burden of producing them, especially in the area of electronically stored information ("ESI").

The proportionality analysis called for by subparagraph (3) often may indicate that the following categories of ESI should not be discoverable; (A) "deleted," "slack," "fragmented," or "unallocated" data on hard drives; (B) random access memory (RAM) or other ephemeral data; (C) on-line access data; (D) data in metadata fields that are frequently updated automatically; (E) backup data that is substantially duplicative of data that is more accessible elsewhere; (F) legacy data; (G) information whose retrieval cannot be accomplished without substantial additional programming or without transforming it into another form before search and retrieval can be achieved; and (H) other forms of ESI whose preservation or production requires extraordinary affirmative measures. *See* Seventh Circuit Electronic Discovery Committee, "Principles Relating to the Discovery of Electronically Stored Information," Principle 2.04(d). In other cases, however, the proportionality analysis may support the discovery of some of the types of ESI on this list. Moreover, this list is not static, since technological changes eventually might reduce the cost of producing some of these types of ESI. Subparagraph (3) requires a case-by-case analysis. If any party intends to request the preservation or production of potentially burdensome categories of ESI, then that intention should be addressed at the initial case management conference in accordance with Supreme Court Rule 218(a)(10) or as soon thereafter as practicable.

Paragraph (p)

This provision is referred to as the "clawback" provision and comports with the new Code of Ethics requirement that if an attorney receives privileged documents, he or she must notify the other side.

Committee Comments
(October 24, 2012)

Paragraph (m) was amended in 2012 to eliminate the filing of discovery with the clerk of the circuit court absent leave of court granted in individual cases based on limited circumstances. The rule is intended to minimize any invasion of privacy that a litigant may have by filing discovery in a public court file.

Committee Comments
(March 28, 2002)

Paragraph (l)

The words “special appearance,” which formerly appeared in paragraph (1) of Rule 201(l), were replaced in 2002 with the word “motion” in order to conform to changes in terminology in section 2–301of the Code of Civil Procedure (735 ILCS 5/2–301 (West 1998)).

Since the amendment to section 2–301 allows a party to file a combined motion, it is possible that discovery could proceed on issues other than the court’s jurisdiction over a party’s person prior to the court ruling on the objection to jurisdiction. While the court may allow discovery on issues other than the court’s jurisdiction over the person of the defendant prior to a ruling on the defendant’s objection to jurisdiction, it is expected that in most cases discovery would not be expanded by the court to other issues until the jurisdictional objection is ruled upon. It sometimes may be logical for the court to allow specific, requested discovery on other issues, for example, where a witness is about to die or leave the country, when the party requesting the additional discovery makes a prima facie showing that the party will suffer substantial injustice if the requested discovery is not allowed.

Paragraph (2) recognizes that discovery may proceed on other than jurisdictional issues before the court rules on the objecting party’s motion objecting to jurisdiction. Participation in discovery by the objecting party does not constitute a waiver by the objecting party’s challenge to jurisdiction.

Committee Comments
(Revised June 1, 1995)

Paragraph (a)

Paragraph (a) of this rule sets forth the four discovery methods provided for and cautions against duplication. The committee considered and discarded a provision requiring leave of court before a party could request by one discovery method information already obtained through another. The committee concluded that there are circumstances in which it is justifiable to require answers to the same or related questions by different types of discovery procedures but felt strongly that the rules should discourage time-wasting repetition; hence the provision that duplication should be avoided. This language is precatory but in the application of the medical examination rule, and in the determination of what is unreasonable annoyance under paragraph (c) of this rule, dealing with prevention of abuse, such a phrase has the beneficial effect of drawing particular attention to the question whether the information sought has already been made available to the party seeking it so that further discovery should be curtailed.

Paragraph (b)

Paragraph (b), subparagraph (1), sets forth generally the scope of discovery under the rules. The language “any matter relevant to the subject matter involved in the pending action” is the language presently employed in Federal Rule 26. The Federal rule also contains the sentence: “It is not ground for objection that the testimony will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” The Joint Committee Comments that accompanied former Illinois Rule 19–4 indicate that a similar sentence appearing in the pre-1970 Federal rule was deliberately omitted from the Illinois rule and suggest that perhaps the language “relating to the merits of the matter in litigation” was intended to limit discovery to evidence. This language was not construed in this restrictive fashion, however. (See Monier v. Chamberlain, 31 Ill. 2d 400, 202 N.E.2d 15 (1964), 66 Ill. App. 2d 472, 213 N.E.2d 425 (3d Dist. 1966), aff’d, 35 Ill. 2d 351, 221 N.E.2d 410 (1966); People ex rel. Terry v. Fisher, 12 Ill. 2d 231, 145 N.E.2d 588 (1957); Krupp v. Chicago

Transit Authority, 8 Ill. 2d 37, 132 N.E.2d 532 (1956).) The only other effect the term "merits" could have would be to prevent discovery of information relating to jurisdiction, a result the committee thought undesirable. Accordingly, the phrase "relevant to the subject matter" was substituted for "relating to the merits of the matter in litigation" as more accurately reflecting the case law.

The phrase "identity and location of persons having knowledge of relevant facts," which appears in both former Rule 19–4 and Federal Rule 26, was retained. This language has been interpreted to require that the interrogating party frame his request in terms of some stated fact rather than simply in the language of the rule, because the use of the broad term "relevant facts" places on the answering party the undue burden of determining relevancy. See Reske v. Klein, 33 Ill. App. 2d 302, 305-06, 179 N.E.2d 415 (1st Dist. 1962); Fedors v. O'Brien, 39 Ill. App. 2d 407, 412-13, 188 N.E.2d 739 (1st Dist. 1963); Nelson v. Pals, 51 Ill. App. 2d 269, 273-75, 201 N.E.2d 187 (1st Dist. 1964); Grant v. Paluch, 61 Ill. App. 2d 247, 210 N.E.2d 35 (1st Dist. 1965).

The definition of "documents" in subparagraph (b)(1) has been expanded to include "all retrievable information in computer storage." This amendment recognizes the increasing reliability on computer technology and thus obligates a party to produce on paper those relevant materials which have been stored electronically.

The first sentence of subparagraph (b)(2) is derived from the first sentence of former Rule 19–5(1). The second sentence was new. It constituted a restatement of the law on the subject of work product as it had developed in the cases decided over the previous decade. See Monier v. Chamberlain, 35 Ill. 2d 351, 221 N.E.2d 410 (1966), aff'g 66 Ill. App. 2d 472, 213 N.E.2d 425 (3d Dist. 1966); Stimpert v. Abdnour, 24 Ill. 2d 26, 179 N.E.2d 602 (1962); Day v. Illinois Power Co., 50 Ill. App. 2d 52, 199 N.E.2d 802 (5th Dist. 1964); Oberkircher v. Chicago Transit Authority, 41 Ill. App. 2d 68, 190 N.E.2d 170 (1st Dist. 3d Div. 1963); Haskell v. Siegmund, 28 Ill. App. 2d 1, 170 N.E.2d 393 (3d Dist. 1960); see also City of Chicago v. Harrison-Halsted Building Corp., 11 Ill. 2d 431, 435, 143 N.E.2d 40 (1957), and City of Chicago v. Shayne, 46 Ill. App. 2d 33, 40, 196 N.E.2d 521 (1st Dist. 1964). The final sentence of this subparagraph was new and is intended to prevent penalizing the diligent and rewarding the slothful.

Discovery of consultants as provided by Rule 201(b)(3) will be proper only in extraordinary cases. In general terms, the "exceptional circumstances" provision is designed to permit discovery of consultants only when it is "impracticable" for a party to otherwise obtain facts or opinions on the same subject. Discovery under the corresponding Federal provision, Rule 26(b)(4)(B) of the Federal Rules of Civil Procedure, has generally been understood as being appropriate, for example, in cases in which an item of physical evidence is no longer available because of destructive testing and the adversary's consultant is the only source of information about the item, or in cases in which all the experts in a field have been retained by other parties and it is not possible for the party seeking discovery to obtain his or her own expert.

Paragraph (c)

Subparagraph (c)(1) covers the substance of former Rule 19–5(2). That rule listed a number of possible protective orders, ending with the catchall phrase, "or *** any other order which justice requires to protect party or deponent from annoyance, embarrassment, or oppression." Subparagraph (c)(2) substitutes the language "denying, limiting, conditioning, or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression." The list of possible discovery orders was deleted as unnecessary in view of the broader language of the new rule. The change in language is by way of clarification and was not intended to effect any change in the broad discretion to make protective orders that was provided by former Rule 19–5(2). See Stowers v. Carp, 29 Ill. App. 2d 52, 172 N.E.2d 370 (2d Dist. 1961).

Subparagraph (c)(2), like subparagraph (c)(1), is designed to clarify rather than change the Illinois practice. The committee was of the opinion that under certain circumstances it might be desirable for the trial court to direct that discovery proceed under its direct supervision, and that this practice might be unusual enough to call for special mention in the rule. The language was taken from section 3104 of the New York Civil Practice Act.

Paragraph (d)

Paragraph (d) of this rule makes it clear that except by order of court discovery procedures may not be initiated before the defendants have appeared or are required to appear. Former Rule 19–1 provided that depositions could not be taken before the defendants had appeared or were required to appear, and former Rule 19–11 made the time requirements for taking depositions applicable to the serving of interrogatories. The former rules, however, left the plaintiff free to serve notice at any time after the commencement of the action of the taking of a deposition, just as long as the taking was scheduled after the date on which the defendants were required to appear, a practice which the bar has found objectionable.

Paragraph (e)

Paragraph (e), as adopted in 1967, provided that unless otherwise ordered "depositions and other discovery procedures

shall be conducted in the sequence in which they are noticed or otherwise initiated." The effect of this provision was to give the last defendant served priority in discovery, since he could determine the date of his appearance. In 1978, this paragraph was amended to adopt the practice followed in the Federal courts since 1970, permitting all parties to proceed with discovery simultaneously unless the court orders otherwise. While empirical studies conducted preliminary to the proposals for amendment of the Federal discovery rules adopted in 1970 indicate that both defendants and plaintiffs are so often dilatory in beginning their discovery that a race for priority does not occur very frequently, affording a priority based on first notice in some cases can result in postponing the other parties' discovery for a very long time. (See Advisory Committee Note to Fed. R. Civ. P. 26.) In most cases it appears more efficient to permit each party to proceed with its discovery, whether by deposition or otherwise, unless in the interests of justice the establishment of priority seems to be called for. The amended rule reserves to the court the power to make such an order. In most instances, however, problems of timing should be worked out between counsel. See paragraph (k).

Paragraph (f)

Paragraph (f) of this rule is derived from the last sentence of former Rule 19–1. The language is unchanged except that it is made applicable to all discovery proceedings.

Paragraph (g)

Paragraph (g) of this rule is a cross-reference to Rule 287, which provides that discovery is not permitted without leave of court in small claims cases, defined in Rule 281 as actions for money not in excess of $2,500, or for the collection of taxes not in excess of that amount.

Paragraph (h)

Rule 201 was amended in 1974 to add paragraph (h) and to reletter former paragraphs (h) and (i) as (i) and (j). Paragraph (h) extends to ordinance violation cases the principle applicable to small claims that discovery procedures under the rules may not be used without leave of court.

Paragraph (i)

Paragraph (i) of this rule makes the provisions of former Rule 19–3, dealing with stipulations for the taking of depositions, applicable to discovery in general. As originally adopted this paragraph was (h). It was relettered (i) in 1974, when the present paragraph (h) was added.

Paragraph (j)

Paragraph (j) of this rule is derived from the last sentence of former Rule 20. The language is unchanged. As originally adopted, this was paragraph (i). It was relettered (j) when present paragraph (h) was added in 1974.

Paragraph (k)

Paragraph (k) was added in 1974. Patterned after the practice in the United States District Courts for the Eastern and Northern Districts of Illinois, it is designed to curtail undue delay in the administration of justice and to discourage motions of a routine nature.

Paragraph (k) was amended to remedy several problems associated with discovery. Language has been added to encourage attorneys to try and resolve discovery differences on their own. Also, committee members cited the problem of junior attorneys, who are not ultimately responsible for cases, perpetuating discovery disagreements. It was agreed that many discovery differences could be eliminated if the attorneys responsible for trying the case were involved in attempts to resolve discovery differences. Reasonable attempts must be made to resolve discovery disputes prior to bringing a motion for sanctions. Counsel responsible for the trial of a case are required to have or attempt a personal consultation before a motion with respect to discovery is initiated. The last sentence of paragraph (k) has been deleted, as the consequences of failing to comply with discovery are discussed in Rule 219.

Paragraph (l)

Paragraph (l) was added in 1981 to negate any possible inference from the language of section 20 of the Civil Practice Act that participation in discovery proceedings after making a special appearance to contest personal jurisdiction constitutes a general appearance and waives the jurisdictional objection, so long as the discovery is limited to the issue of personal jurisdiction.

Paragraph (m)

Paragraph (m) was added in 1989. The new paragraph allows the circuit courts to adopt local rules to regulate or prohibit the filing of designated discovery materials with the clerk. The identity of the affected materials should be designated in the local rules, as should any procedures to compel the filing of materials that would otherwise not be filed under the local rules.

Paragraphs (n) and (o)

Regarding paragraph (n), any claim of privilege with respect to a document must be stated specifically pursuant to this rule. Pursuant to paragraph (o), all discovery filed upon a nonparty shall be filed with the clerk of the court.

Rule 202. Purposes for Which Depositions May be Taken in a Pending Action

Any party may take the testimony of any party or person by deposition upon oral examination or written questions for the purpose of discovery or for use as evidence in the action. The notice, order, or stipulation to take a deposition shall specify whether the deposition is to be a discovery deposition or an evidence deposition. In the absence of specification a deposition is a discovery deposition only. If both discovery and evidence depositions are desired of the same witness they shall be taken separately, unless the parties stipulate otherwise or the court orders otherwise upon notice and motion. If the evidence deposition of a witness is to be taken within 21 days of trial, a discovery deposition is not permitted unless the parties stipulate otherwise or the court orders otherwise upon notice and motion.

Amended June 1, 1995, effective January 1, 1996.

Committee Comments

This rule is former Rule 19 with minor language changes but no changes of substance. The rule preserves the distinction that has been made in Illinois between a deposition taken for discovery purposes and one taken for evidence. See Rule 212, dealing with the use of discovery depositions and evidence depositions at the trial.

Pursuant to the amended language of this rule, an evidence deposition may be taken within 21 days of trial without a discovery deposition. This change is to ensure that there will no longer be delays in commencing a trial because an attorney wanted a separate discovery deposition prior to taking an evidence deposition shortly before trial without leave of court or stipulation.

Rule 203. Where Depositions May be Taken

Unless otherwise agreed, depositions shall be taken in the county in which the deponent resides or is employed or transacts business in person, or, in the case of a plaintiff-deponent, in the county in which the action is pending. However, the court, in its discretion, may order a party or a person who is currently an officer, director, or employee of a party to appear at a designated place in this State or elsewhere for the purpose of having the deposition taken. The order designating the place of a deposition may impose any terms and conditions that are just, including payment of reasonable expenses.

Amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996.

Committee Comments
(Revised June 1, 1995)

This rule is derived from former Rule 19--8(3). There is one change of substance. The phrase "or a nonresident for whose benefit the action is brought" has been added to require that not only the nominal plaintiff but the person for whose benefit the

action is brought must present himself for the taking of his deposition.

Supreme Court Rule 203 was amended contemporaneously with the change in 206(a) in 1987 to protect nonparty witnesses from unwarranted interference with their business and/or personal lives which might otherwise occur when Rule 206(a) is employed.

The only revision which has been made to this rule is one of form, which makes the rule gender-neutral.

Rule 204. Compelling Appearance of Deponent

(a) Action Pending in This State.

(1) *Subpoenas.* Except as provided in paragraph (c) hereof: (i) the clerk of the court shall issue subpoenas on request; or (ii) subpoenas may be issued by an attorney admitted to practice in the State of Illinois who is currently counsel of record in the pending action. The subpoena may command the person to whom it is directed to produce documents or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted under these rules subject to any limitations imposed under Rule 201(c).

(2) *Service of Subpoenas.* A deponent shall respond to any lawful subpoena of which the deponent has actual knowledge, if payment of the fee and mileage has been tendered. Service of a subpoena by mail may be proved prima facie by a return receipt showing delivery to the deponent or his authorized agent by certified or registered mail at least seven days before the date on which appearance is required and an affidavit showing that the mailing was prepaid and was addressed to the deponent, restricted delivery, return receipt requested, showing to whom, date and address of delivery, with a check or money order for the fee and mileage enclosed.

(3) *Notice to Parties, et al.* Service of notice of the taking of the deposition of a party or person who is currently an officer, director, or employee of a party is sufficient to require the appearance of the deponent and the production of any documents or tangible things listed in the notice.

(4) *Production of Documents in Lieu of Appearance of Deponent.* The notice, order or stipulation to take a deposition may specify that the appearance of the deponent is excused, and that no deposition will be taken, if copies of specified documents or tangible things are served on the party or attorney requesting the same by a date certain. That party or attorney shall serve all requesting parties of record at least three days prior to the scheduled deposition, with true and complete copies of all documents, and shall make available for inspection tangible things, or other materials furnished, and shall file a certificate of compliance with the court. Unless otherwise ordered or agreed, reasonable charges by the deponent for production in accordance with this procedure shall be paid by the party requesting the same, and all other parties shall pay reasonable copying and delivery charges for materials they receive. A copy of any subpoena issued in connection with such a deposition shall be attached to the notice and immediately filed with the court, not less than 14 days prior to the scheduled deposition. The use of this procedure shall not bar the taking of any person's deposition or limit the scope of same.

(b) Action Pending in Another State, Territory, or Country. Any officer or person authorized by the laws of another State, territory, or country to take any deposition in this State, with or without a commission, in any action pending in a court of that State, territory, or country may petition the circuit court in the county in which the deponent resides or is employed or transacts business in person or is found for a subpoena to compel the appearance of the deponent or for an order to compel the giving of testimony by the deponent. The court may hear and act upon the petition with or without notice as the court directs.

(c) Depositions of Physicians. The discovery depositions of nonparty physicians being deposed in their professional capacity may be taken only with the agreement of the parties and the subsequent consent of the deponent or under a subpoena issued upon order of court. A party shall pay a reasonable fee to a physician for the time he or she will spend testifying at any such deposition. Unless the physician was retained by a party for the purpose of rendering an opinion at trial, or unless otherwise ordered by the court, the fee shall be paid by the party at whose instance the deposition is taken.

(d) Noncompliance by Nonparties: Body Attachment.

(1) An order of body attachment upon a nonparty for noncompliance with a discovery order or subpoena shall not issue without

proof of personal service of the rule to show cause or order of contempt upon the nonparty.

(2) The service of the rule to show cause or order of contempt upon the nonparty, except when the rule or order is initiated by the court, shall include a copy of the petition for rule and the discovery order or subpoena which is the basis for the petition for rule.

(3) The service of the rule to show cause or order of contempt upon the nonparty shall be made in the same manner as service of summons provided for under sections 2–202, 2–203(a)(1) and 2–203.1 of the Code of Civil Procedure.

Amended June 23, 1967, and amended October 21, 1969, effective January 1, 1970; amended September 29, 1978, effective November 1, 1978; amended July 1, 1985, effective August 1, 1985; amended November 21, 1988, effective January 1, 1989; amended June 19, 1989, effective August 1, 1989; amended June 1, 1995, effective January 1, 1996; amended June 11, 2009, effective immediately; amended December 16, 2010, effective immediately; amended May 29, 2014, eff. July 1, 2014.

Committee Comments
(Revised June 1, 1995)

Paragraph (a) of this rule was revised effective June 23, 1967, to divide it into three subparagraphs and add the material contained in subparagraph (a)(2), dealing with service of subpoenas.

The first sentence of the subparagraph (a)(2) states existing law. (*Chicago and Aurora R.R. Co. v. Dunning* (1857), 18 Ill. 494.) The second sentence simplifies proof of actual notice when service is made by certified or registered mail. It was amended in 1978 to conform its requirements to presently available postal delivery service. See Committee Comments to Rule 105.

Subparagraphs (a)(1) and (a)(3), without their present subtitles, appeared as paragraph (a) of Rule 204(a) as adopted effective January 1, 1967. New at that time was the provision now in subparagraph (a)(1) making an order of the court a prerequisite to the issuance of subpoena for the discovery deposition of a physician or surgeon. Also new in the 1967 rule was the use of the term "employee" instead of the former "managing agent" in what is now subparagraph (a)(3). The phrase "and no subpoena is necessary" which appeared in former Rule 19--8(1) (effective January 1, 1956), on which Rule 204(a) was based, was placed there to emphasize a change in practice to which the bar had been accustomed by 1967, and it was deleted in the 1967 revision as no longer needed.

Subparagraph (4) of paragraph (a) sets forth the procedures to be followed in those instances where the production of documents or tangible things by an individual may obviate the need for taking that person's deposition. The rule recognizes that subpoenas must be directed to individuals, not inanimate objects. Existing law regarding privilege and permissible discovery in a given case is unaffected by the rule. (See *Lewis v. Illinois Central R.R. Co.*, 234 Ill. App. 3d 669 (5th Dist. 1992).) The rule requires disclosure to all parties with prompt and complete production of all materials received, regardless of whether materials in addition to those specified are furnished by the deponent.

Paragraph (b) was not affected by the June 23, 1967, amendment. It was derived from former Rule 19--8(2) as it stood before 1967.

In 1985 paragraph (a) was amended and paragraph (c) was added to regulate the practice of compelling physicians and surgeons to appear to be deposed in their professional capacity and to set guidelines concerning professional fees which may, by agreement, be paid to physicians and surgeons for attending such depositions. Traditionally, expert witnesses are in the same position as other witnesses with respect to their fees. (*In re Estate of James* (1956), 10 Ill. App. 2d 232.) Physicians and other experts subpoenaed to testify may not refuse to do so on the ground that they are entitled to be paid some additional fee on the basis of being an expert. (*Dixon v. People* (1897), 168 Ill. 179.) Expert witnesses, like other witnesses, normally are entitled only to $20 per day and 20 cents per mile of necessary travel. (*Falkenthal v. Public Building Com.* (1983), 111 Ill. App. 3d 703.) As a practical matter, however, physicians and surgeons usually do request a professional fee, in addition to the statutory witness fee, to reimburse them for the time they spend testifying at depositions, and the party at whose instance the physician or surgeon is subpoenaed is normally loathe to refuse. This rule is intended to regulate this practice. A party may agree to pay a reasonable professional fee to a physician or surgeon for the time he or she will spend testifying at any deposition. The fee should be paid only after the doctor has testified, and it should not exceed an amount which reasonably reimburses the doctor for the time he or she actually spent testifying at deposition. Unless the doctor was retained for the purpose of rendering an expert opinion at trial, or unless otherwise ordered by the court, the party at whose instance the deposition is being taken would be responsible for paying the professional fee, as well as other fees and expenses provided for in Rule 208.

Rule 204(c) implies that the trial court will exercise discretion in ordering the issuance of a subpoena upon a physician or

surgeon and will refuse to do so unless there is some preliminary showing of good cause, regardless of whether there has been an objection by opposing counsel. At a minimum the moving party must be able to show that he has received the medical records available in the case and nevertheless has good reason to believe that a deposition is necessary. If appropriate, the court may require that such a showing of good cause be accomplished by an affidavit accompanying the motion.

Paragraph (c) was amended in 1989 to provide that a party "shall pay," rather than "may agree to pay," a reasonable fee to a physician or surgeon for the time the physician or surgeon will spend testifying at any such deposition. This change will clarify the responsibility of parties to not intrude on the time of physicians and surgeons without seeing to it that the physicians or surgeons receive reasonable compensation for the time they spend undergoing questioning on deposition.

The reference in paragraph (c) to "surgeons" has been stricken because it is redundant. Moreover, paragraph (c) is made applicable only to "nonparty" physicians. The protection afforded a physician by paragraph (c), including the payment of a fee for time spent, has no application to a physician who is a party to the suit. Such protection should likewise be unavailable to nonparty physicians who are closely associated with a party, such as physicians who are stockholders in or officers of a professional corporation named as a defendant, or a physician who is a respondent in discovery.

Rule 205. Persons Before Whom Depositions May Be Taken

(a) Within the United States. Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken (1) before an officer authorized to administer oaths by the laws of this State or of the United States or of the place where the examination is held, or (2) before a person appointed by the court. The officer or person is empowered to administer oaths and take testimony. Whenever the term "officer" is used in these rules, it includes a person appointed by the court unless the context indicates otherwise.

(b) In Foreign Countries. In a foreign state or country depositions shall be taken (1) before a secretary of embassy, consul general, consul, vice-consul, or consular agent of the United States, or any officer authorized to administer oaths under the laws of this State, or the United States, or of the place where the examination is held, or (2) before a person appointed by the court. The officer or person is empowered to administer oaths and take testimony.

(c) Issuance of Commissions and Letters Rogatory. A commission, *dedimus potestatem*, or letter rogatory is not required but if desired shall be issued by the clerk without notice. An officer may be designated in a commission either by name or descriptive title and a letter rogatory may be addressed "To the Appropriate Authority in (here name the country)."

(d) Disqualification for Interest. No deposition shall be taken before a person who is a relative of or attorney for any of the parties, a relative of the attorney, or financially interested in the action.

Committee Comments

Paragraphs (a) and (b)

Paragraphs (a) and (b) of this rule are derived from former Rule 19--2(1), (2) and (3) with minor language changes, but no changes of substance.

Paragraph (c)

Paragraph (c) is derived from former Rule 19--2(4). The reference to letters rogatory was added because, though requests for them may be rare in State practice, there may be occasional situations in which they are required. See N.Y. Civ. Prac. L. & R. §3113(a)(3) and Rule 28(b) of the Federal Rules of Civil Procedure.

Paragraph (d)

Paragraph (d) is former Rule 19--2(5) with minor language changes.

Rule 206. Method of Taking Depositions on Oral Examination

(a) Notice of Examination; Time and Place. A party desiring to take the deposition of any person upon oral examination shall serve notice in writing a reasonable time in advance on the other parties. The notice shall state the time and place for taking the deposition; the name and address of each person to be examined, if known, or, if unknown, information sufficient to identify the deponent; and whether the deposition is for purposes of discovery or for use in evidence.

(1) *Representative Deponent.* A party may in the notice and in a subpoena, if required, name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. The subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization.

(2) *Audio-Visual Recording to be Used.* If a party serving notice of deposition intends to record the deponent's testimony by use of an audio-visual recording device, the notice of deposition must so advise all parties to the deposition. If any other party intends to record the testimony of the witness by use of an audio-visual recording device, notice of that intent must likewise be served upon all other parties a reasonable time in advance. Such notices shall contain the name of the recording-device operator. After notice is given that a deposition will be recorded by an audio-visual recording device, any party may make a motion for relief in the form of a protective order under Rule 201. If a hearing is not held prior to the taking of the deposition, the recording shall be made subject to the court's ruling at a later time.

If the deposition is to be taken pursuant to a subpoena, a copy of the subpoena shall be attached to the notice. On motion of any party upon whom the notice is served, the court, for cause shown, may extend or shorten the time. Unless otherwise agreed by the parties or ordered by the court, depositions shall not be taken on Saturdays, Sundays, or court holidays.

(b) Any Party Entitled to Take Deposition Pursuant to a Notice. When a notice of the taking of a deposition has been served, any party may take a deposition under the notice, in which case the party shall pay the fees and charges payable by the party at whose instance a deposition is taken.

(c) Scope and Manner of Examination and Cross-Examination.

(1) The deponent in a discovery deposition may be examined regarding any matter subject to discovery under these rules. The deponent may be questioned by any party as if under cross-examination.

(2) In an evidence deposition the examination and cross-examination shall be the same as though the deponent were testifying at the trial.

(3) Objections at depositions shall be concise, stating the exact legal nature of the objection.

(d) Duration of Discovery Deposition. No discovery deposition of any party or witness shall exceed three hours regardless of the number of parties involved in the case, except by stipulation of all parties or by order upon showing that good cause warrants a lengthier examination.

(e) Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in any manner that unreasonably annoys, embarrasses, or oppresses the deponent or party, the court may order that the examination cease forthwith or may limit the scope and manner of taking the examination as provided by these rules. An examination terminated by the order shall be resumed only upon further order of the court. Upon the demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to present a motion for an order. The court may require any party, attorney or deponent to pay costs or expenses, including reasonable attorney fees, or both, as the court may deem reasonable.

(f) Record of Examination; Oath; Objections. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in ~~his or her~~ the officer's presence, record the testimony of the witness. The testimony shall be taken

stenographically, by sound-recording device, by audio-visual recording device, or by any combination of all three. The testimony shall be transcribed at the request of any party. Objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, or to the conduct of any person, and any other objection to the proceedings, shall be included in the deposition. Evidence objected to shall be taken subject to the objection. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written questions to the officer, who shall propound them to the witness and record the answers verbatim.

(g) ~~Videotaped~~ Video Depositions. Except as otherwise provided in this rule, the rules governing the practice, procedures and use of depositions shall apply to ~~videotaped~~ depositions recorded by audio-visual equipment.

(1) Depositions which are to be recorded by ~~on an~~ audio-visual equipment ~~recording device~~ shall begin by the operator of the equipment ~~device~~ stating, on camera, (1) the operator's name and address, (2) the date, time and place of the deposition, (3) the caption of the case, (4) the name of the witness, (5) the party on whose behalf the deposition is being taken, and (6) the party at whose instance the deposition is being recorded on an audio-visual recording device. The officer before whom the deposition is being taken shall state the officer's name ~~identify himself or herself~~ and swear the witness on camera. At the conclusion of the deposition the operator shall state on camera that the deposition is concluded. If the deposition requires the use of more than one videotape or other storage medium, the end of each recorded segment ~~videotape~~ and the beginning of each succeeding segment ~~tape~~ shall be announced on camera by the operator.

(2) The operator shall initially take custody of the audio-visual recording ~~videotape~~ of the deposition and shall run through the recording ~~videotape~~ to determine the exact length of time of the deposition. The operator shall sign an affidavit stating the length of time of the deposition and shall certify that the recording ~~videotape~~ is a true record of the deposition and shall certify that the operator has not edited or otherwise altered the recording~~videotape~~. A deposition so certified requires no further proof of authenticity. If requested by any party at the conclusion of the taking of the deposition, the operator shall make a copy of the videotape and deliver it to the party requesting it at the cost of that party.

(3) A recording ~~videotape~~ of a deposition ~~for purposes of discovery only~~ shall be returned to the attorney for the party at whose instance the deposition was recorded~~videotaped~~. Said attorney is responsible for the safeguarding of the recording ~~videotape~~ and shall permit the viewing of and shall provide a copy of the recording ~~videotape~~ upon the request and at the cost of any party. A recording ~~videotape~~ of a discovery deposition shall not be filed with the court except by leave of court for good cause shown.

(4) A recording ~~videotape~~ of a deposition for use in evidence shall not be filed with the court as a matter of course. At the time that a recording of a deposition is offered into evidence, it shall be filed with the court in the form and manner specified by local rule.~~shall be securely sealed by the operator, in an envelope bearing the title and number of the action, and marked "Deposition(s) of (here insert name(s) of deponent(s))," and promptly filed or sent by certified mail to the clerk of the court for filing. Upon payment of reasonable charges therefor, the operator shall furnish a copy of the videotape to any party or the deponent.~~

(5) The party at whose instance the ~~videotaped~~ deposition is recorded audio-visually ~~taken~~ shall pay the charges of the recording ~~videotape~~ operator for attending and shall pay any charges ~~for~~ associated with filing the audio-visual recording. ~~videotape of an evidence deposition.~~

(6) The recording ~~videotape~~ of a deposition may be presented at trial in lieu of reading from the stenographic transcription of the deposition.

(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as

otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.

(1) The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition.

(3) Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.

Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended February 16, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments
(February 16, 2011)

Paragraph (h)

The Committee is of the opinion that the apparent acceptance and utilization of telephonic and other remote electronic means depositions demonstrate that there is no need to require a party to obtain an order on motion to proceed with such depositions absent a written stipulation. Therefore, the Committee recommended the elimination of such a requirement so that the depositions may proceed by notice.

Committee Comments
(Revised October 22, 1999)

Paragraph (a)

Paragraph (a) of this rule is derived from former Rule 19-6(1). The requirement that the notice state the name or title of the person before whom a deposition is to be taken has been eliminated, and the phrase "if the name is not known, a general description" changed to "if unknown, information." The penultimate sentence is new. "Subpoena," of course, includes a subpoena *duces tecum*.

In 1985, Rule 206 was amended to allow audio-visual recordation of depositions upon notice, without a requirement that the parties obtain leave of court.

Paragraph (a) was amended in 1985 to bar depositions from being taken on Saturday, Sunday or court holidays, unless otherwise ordered by the court.

Paragraph (a) was amended in 1987 to add paragraph (a)(1) on representative deponents. The procedure is substantially similar to the procedure set forth in Federal Rule of Civil Procedure 30(b). The intent of the rule is to provide a mechanism for obtaining information without representative depositions. Failure to comply with the rules should call for appropriate sanctions.

Supreme Court Rule 203 was amended contemporaneously with the change in 206(a) in 1987. The elimination of the court's discretion to order depositions "in any other place designated by an order of the court" in old Rule 203 was to protect nonparty witnesses from unwarranted interference with their business

and/or personal lives which might otherwise occur when 206(a) is employed.

The amendment to Rule 206(a) is not intended to expand the court's subpoena power in any way. A nonparty, nonresident witness is subject to the court's subpoena power only to the extent authorized by law.

Paragraph (b)

Paragraph (b) is new. It covers the situation in which one party serves a notice to take the discovery and evidence depositions of a deponent and after taking the discovery deposition decides not to take the deposition for evidence. The new provision permits the opposing party to proceed to take the evidence deposition without the necessity of serving a new notice.

Paragraph (c)

Paragraph (c) covers part of the subject matter covered by former Rule 19-4. The provision dealing with general scope of discovery appearing in former Rule 19-4 has been deleted, since that subject is covered in Rule 201(b). The first sentence of paragraph (c) of this rule is simply a cross-reference to that provision. The second sentence effects a change in Illinois practice. Under former Rule 19-4, a party was permitted to question a deponent as if under cross-examination in a discovery deposition only if the witness was hostile. The prevailing practice appeared to be to examine witnesses as if under cross-examination whether or not they were hostile. Therefore, the committee deleted the requirement of hostility to conform the language of the rule to the actual practice. In subparagraph (c)(2) of this rule, the requirement that examination and cross-examination in the taking of an evidence deposition shall be the same as though the deponent were testifying at the trial is retained.

Subparagraph (c)(3) has been added to eliminate speaking objections.

Paragraph (d)

The Committee is of the opinion that the vast majority of all discovery depositions can easily be concluded within three hours. (For further comment on this issue, see committee comments to Rule 218.)

Paragraphs (e) and (f)

Paragraphs (e) and (f) of this rule are derived from former Rules 19-6(3) and (2), respectively, with minor language changes, but no changes in substance.

Paragraph (f) was amended in 1975 to provide for the recording of depositions by audio-visual as well as sound-recording devices.

Paragraph (g)

The precautions built into paragraph (g), "Videotaped Depositions," are intended to insure that strict adherence to accepted procedures found in other States that allow videotaping will avoid any problems if videotaping of depositions becomes a widespread practice.

Paragraph (h)

The committee is of the opinion that telephonic and other remote electronic means depositions should be allowed by a specific paragraph of Rule 206. It is meant to reduce unnecessary discovery costs. The committee recommends that all other demonstrative evidence to be presented to the deponent be premarked before being provided to the officer administering the oath and the other parties. The parties may agree pursuant to Rule 201(i) to amend or waive any conditions of paragraph (h).

Rule 207. Signing and Filing Depositions

(a) Submission to Deponent; Changes; Signing. Unless signature is waived by the deponent, the officer shall instruct the deponent that if the testimony is transcribed the deponent will be afforded an opportunity to examine the deposition at the office of the officer or reporter, or elsewhere, by reasonable arrangement at the deponent's expense, and that corrections based on errors in reporting or transcription which the deponent desires to make will be entered upon the deposition with a statement by the deponent that the reporter erred in reporting or transcribing the answer or answers involved. The deponent may not otherwise change either the form or substance of his or her answers. The deponent shall provide the officer with an electronic or physical address to which notice is to be sent when the transcript is available for examination and signing. When the deposition is fully transcribed, the officer shall deliver ~~mail~~ to the deponent, at the address ~~last~~ supplied, notice that it is available and may be examined at a stated place at stated times, or pursuant to arrangement. After the deponent has examined the deposition, the officer shall enter upon it any changes the deponent desires to make, with the reasons the deponent gives for making them. If the deponent does not appear at the place specified in the notice within 28 days after the mailing of the notice, or within the same 28 days make other arrangements for examination of the deposition, or after examining the deposition refuses to sign it, or after it has been made available to the deponent by arrangement it remains unsigned for 28 days, the officer's certificate shall state the reason for the omission of the signature, including any reason given by the deponent for a refusal to sign. The deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 211(d) the court holds that the reasons given by the deponent for a refusal to sign require rejection of the deposition in whole or in part.

(b) Certification, Filing, and Notice of Filing.

(1) If the testimony is transcribed, the officer shall certify ~~on~~ within the deposition transcript that the deponent was duly sworn by the officer ~~him~~ and that the deposition is a true record of the testimony given by the deponent. A deposition so certified requires no further proof of authenticity. ~~At the request of any party, the officer shall then securely seal the deposition, together with all exhibits, or copies thereof, in an envelope bearing the title and number of the action and marked "Deposition(s) of (here insert name(s) of deponent(s))" and promptly file it or send it by registered or certified mail to the clerk of the court for filing.~~

(2) Deposition transcripts shall not be filed with the clerk of the court as a matter of course. The party filing ~~causing~~ a deposition ~~to be filed~~ shall promptly serve notice thereof on the other parties and shall file the transcript and any exhibits in the form and manner specified by local rule.

Amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments
(Revised June 1, 1995)

Paragraph (a)

Paragraph (a), as adopted in 1967, was derived from former Rule 19-6(4), with some changes. Former Rule 19-6(4) contemplated that all depositions would be transcribed, that unless reading was waived by the parties and the deponent all depositions would be read to or by the deponent, and that all depositions would be signed by the deponent unless signature was waived, or the deponent was ill or could not be found, or refused to sign. Paragraph (a) of the rule as adopted in 1967 contemplated that the contents of a deposition will not always warrant the expense of having it transcribed. It provided that if the deposition were transcribed, it had to be made available to the deponent for examination and changes, if any, unless the parties and deponent waived signature. Thus the new rule substituted a single waiver for the two provided in

former Rule 19-6(4).

The procedure was further simplified in 1981 when the paragraph was amended to eliminate the requirement that the deponent sign the deposition unless he is ill, cannot be found, or refuses to sign, or unless signature is waived by the parties and by the deponent. Under the paragraph as amended, if the deposition is transcribed, the officer must notify the deponent that it is available for his inspection, and that after inspecting it he may make such changes as he wishes. If the deponent does not appear or make arrangements to inspect the deposition, after four weeks the officer will certify the deposition and it will be useable as if it had been inspected and signed by the deponent.

Supreme Court Rule 207(a) currently permits a deponent to make changes in both the form and substance of the answers which he or she gives under oath at the time of a deposition. The potential for testimonial abuse has become increasingly evident as witnesses submit lengthy errata sheets in which their testimony is drastically altered, including changing affirmative responses to negative and the reverse. *LaSalle National Bank v. 53rd-Ellis Currency Exchange, Inc.*, 249 Ill. App. 3d 415, 433-36 (1st Dist. 1993).

This rule has been amended to permit "corrections" only under circumstances where the deponent believes the court reporter has inaccurately reported or transcribed an answer or answers. Testimony accurately reported and transcribed at a deposition may not be subsequently revised by the deponent. No change is made regarding existing law as to the uses of deposition testimony at trial or hearing for impeachment, as an evidentiary or judicial admission, or for any other permitted purpose. See Rule 212; *Hansen v. Ruby Construction Co*., 155 Ill. App. 3d 475, 480-82 (1st Dist. 1987); *Caponi v. Larry's 66*, 236 Ill. App. 3d 660, 665-67, 671-73 (2d Dist. 1992).

Paragraph (b)

Paragraph (b) of this rule does away with the requirement of former Rule 19-6(5)(a) that all evidence depositions be transcribed and filed. When no party cares to have the deposition transcribed and filed, there is no reason for requiring the party taking the deposition to undergo the expense of transcription and filing. Certification, rather than certification *and filing*, establishes authenticity under the new provision. Otherwise the language of former Rule 19-6(5)(a) is unchanged. Subparagraph (b)(2) is derived from former Rule 19-6(5)(b). The language is unchanged.

Rule 208. Fees and Charges; Copies

(a) Who Shall Pay. Except as provided in paragraph (e), the party at whose instance the deposition is taken shall pay the fees of the witness and of the officer and the charges of the recorder or stenographer for attending. The party at whose request a deposition is ~~transcribed and filed~~ shall pay the charges for transcription. ~~and filing. The party at whose request a tape-recorded deposition is filed without having been transcribed shall pay the charges for filing, and if such deposition is subsequently transcribed the party requesting it shall pay the charges for such transcription.~~ If, however, the scope of the examination by any other party exceeds the scope of examination by the party at whose instance the deposition is taken, the fees and charges due to the excess shall be summarily taxed by the court and paid by the other party.

(b) Amount. The officer taking and certifying a deposition is entitled to any fees provided by statute, together with the reasonable and necessary charges for a recorder or stenographer for attending and transcribing the deposition. Every witness attending before the officer is entitled to the fees and mileage allowance provided by statute for witnesses attending courts in this State.

(c) Copies. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition transcript to any party or to the deponent.

(d) Taxing as Costs. The fees and charges provided for in paragraphs (a) through (c) may, in the discretion of the trial court, be taxed as costs.

(e) Controlled Expert Witness Fees. Each party shall, unless manifest injustice would result, bear the expense of all fees charged by his or her Rule 213(f)(3) controlled expert witness or witnesses.

Amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

Paragraph (a)

Paragraph (a) of this rule is derived from former Rule 19-6(5)(c). Under the latter provision the cost of transcribing and filing a deposition taken for discovery purposes was charged to the party at whose request it was filed, while the cost of transcribing and filing a deposition taken for purposes of evidence was charged in all cases to the person at whose instance it was taken. This reflected the fact that all evidence depositions were required to be transcribed and filed. Since under paragraph (b) of Rule 207, the evidence deposition, like the discovery deposition, is transcribed and filed only if one of the parties requests it, the rule has been changed to place the cost of transcription and filing on the party making the request. The last sentence of former Rule 19-6(5)(c) is paragraph (c) of the new rule. Otherwise the provisions of former Rule 19-6(5)(c) appear without change in paragraph (a) of this rule.

Paragraph (a) was amended in 1975 to make it plain that the party at whose instance a deposition is taken shall pay the charges for the recorder when the deposition is recorded by sound or audio-visual means, that when such a deposition is filed without being transcribed the party at whose instance it is filed shall pay the charges for filing, and that, if subsequently transcribed, the party requesting it shall pay the charges for such transcription.

Paragraph (b)

Paragraph (b) of this rule is derived from former Rule 19-6(5)(d). The language is unchanged except for the deletion of the reference to masters in chancery made necessary by the provision of the judicial article abolishing that office. The rule provides simply that the fees shall be set by statute.

Paragraph (b) was amended in 1975 to make it plain that when a deposition is recorded by sound or audio-visual device the officer taking and certifying the deposition is entitled to the reasonable and necessary charges for a recorder.

Paragraph (c)

This is the last sentence of former Rule 19-6(5)(c).

Paragraph (d)

Paragraph (d) is derived from former Rule 19-6(5)(e). The words “as in equity cases” have been deleted.

Rule 209. Failure to Attend or Serve Subpoena; Expenses

(a) Failure to Attend or to Proceed; Expenses. If the party serving notice of the taking of a deposition fails to attend or to proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party serving the notice to pay to the other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

(b) Failure to Serve Subpoena or Notice; Expenses. If the party serving notice of the taking of a deposition fails to serve a subpoena or notice, as may be appropriate, requiring the attendance of the deponent and because of that failure the deponent does not attend, and if another party attends in person or by attorney because he expects the deposition of that deponent to be taken, the court may order the party serving the notice to pay to the other party the amount of the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

Committee Comments

Paragraphs (a) and (b) of this rule are former Rule 19--6(6), with a language revision in paragraph (b), but no change of substance.

Rule 210. Depositions on Written Questions

(a) Serving Questions; Notice. A party desiring to take the deposition of any person upon written questions shall serve them upon the other parties with a notice stating the name and address of the person who is to answer them if known, or, if the name is not known, a general description sufficient to identify the deponent ~~him~~, and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within 14 days thereafter a party so served may likewise serve cross-questions. Within 7 days after being served with cross-questions a party may likewise serve redirect questions. Within 7 days after being served with redirect questions, a party may likewise serve re-cross-questions.

(b) Officer to Take Responses and Prepare Record. The party at whose instance the deposition is taken shall transmit a copy of the notice and copies of the initial and subsequent questions served to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rules 206(f) and 207, to take the testimony of the deponent in response to the questions and to prepare, certify, and serve ~~file or mail~~ the deposition on the parties, attaching thereto the copy of the notice and the questions received by the officer. ~~him.~~ No party, attorney, or person interested in the event of the action (unless he is the deponent) shall be present during the taking of the deposition or dictate, write, or draw up any answer to the questions.

(c) Notice of Filing. Depositions shall not be filed with the clerk of the court as a matter of course. The party filing ~~causing~~ a deposition ~~to be filed~~ shall promptly serve notice thereof on the other parties and shall file the deposition and any exhibits in the form and manner specified by local rule.

Amended effective January 12, 1967; amended October 17, 2006, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

Paragraph (a)

Paragraph (a) of this rule is derived from former Rule 19-7(1). The language is unchanged except that the phrase, "if known, or, if the name is not known, a general description sufficient to identify him," has been inserted to make the requirements for notices to take depositions upon written questions and upon oral examination the same. See Rule 206(a).

Paragraphs (b) and (c)

Paragraphs (b) and (c) are derived from former Rules 19-7(2) and (3), respectively. There are no changes of substance.

Rule 211. Effect of Errors and Irregularities in Depositions; Objections

(a) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) As to Disqualification of Officer or Person. Objection to taking a deposition because of disqualification of the officer or person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could have been discovered with reasonable diligence.

(c) As to Competency of Deponent; Admissibility of Testimony; Questions and Answers; Misconduct; Irregularities.

(1) Grounds of objection to the competency of the deponent or admissibility of testimony which might have been corrected if presented during the taking of the deposition are waived by failure to make them at that time; otherwise objections to the competency of the deponent or admissibility of testimony may be made when the testimony is offered in evidence.

(2) Objections to the form of a question or answer, errors and irregularities occurring at the oral examination in the manner or taking of the deposition, in the oath or affirmation, or in the conduct of any person, and errors and irregularities of any kind which might be corrected if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written questions are waived unless served in writing upon the party propounding them within the time allowed for serving succeeding questions and, in the case of the last questions authorized, within 7 days after service thereof.

(4) A motion to suppress is unnecessary to preserve an objection seasonably made. Any party may, but need not, on notice and motion obtain a ruling by the court on the objections in advance of the trial.

(d) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after the defect is, or with due diligence might have been, ascertained.

Committee Comments

This rule is derived from former Rule 19--9. The language is unchanged except that the period for filing objections to the form of written questions has been extended to seven days in subparagraph (c)(3) in keeping with the committee's policy of measuring time periods in multiples of seven days.

Rule 212. Use of Depositions

(a) Purposes for Which Discovery Depositions May Be Used. Discovery depositions taken under the provisions of this rule may be used only:

(1) for the purpose of impeaching the testimony of the deponent as a witness in the same manner and to the same extent as any inconsistent statement made by a witness;

(2) as an admission made by a party or by an officer or agent of a party in the same manner and to the same extent as any other admission made by that person;

(3) if otherwise admissible as an exception to the hearsay rule;

(4) for any purpose for which an affidavit may be used; or

(5) upon reasonable notice to all parties, as evidence at trial or hearing against a party who appeared at the deposition or was

given proper notice thereof, if the court finds that the deponent is ~~neither~~ not a controlled expert witness ~~nor a party~~, the deponent's evidence deposition has not been taken, and the deponent is unable to attend or testify because of death or infirmity, and if the court, based on its sound discretion, further finds such evidence at trial or hearing will do substantial justice between or among the parties.

(b) Use of Evidence Depositions. The evidence deposition of a physician or surgeon may be introduced in evidence at trial on the motion of either party regardless of the availability of the deponent, without prejudice to the right of either party to subpoena or otherwise call the physician or surgeon for attendance at trial. All or any part of other evidence depositions may be used for any purpose for which a discovery deposition may be used, and may be used by any party for any purpose if the court finds that at the time of the trial:

(1) the deponent is dead or unable to attend or testify because of age, sickness, infirmity or imprisonment;

(2) the deponent is out of the county, unless it appears that the absence was procured by the party offering the deposition, provided, that a party who is not a resident of this State may introduce his own deposition if he is absent from the county; or

(3) the party offering the deposition has exercised reasonable diligence but has been unable to procure the attendance of the deponent by subpoena; or finds, upon notice and motion in advance of trial, that exceptional circumstances exist which make it desirable, in the interest of justice and with due regard for the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(c) Partial Use. If only a part of a deposition is read or used at the trial by a party, any other party may at that time read or use or require him to read any other part of the deposition which ought in fairness to be considered in connection with the part read or used.

(d) Use After Substitution, Dismissal, or Remandment. Substitution of parties does not affect the right to use depositions previously taken. If any action in any court of this or any other jurisdiction of the United States is dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, or if any action is remanded by a court of the United States to a court of this State, all depositions lawfully taken and duly filed in the former action, or before remandment, may be used as if taken in the later action, or after remandment.

Amended February 19, 1982, effective April 1, 1982; amended May 28, 1982, effective July 1, 1982; amended March 1, 2001, effective immediately; amended March 28, 2002, effective July 1, 2002; amended December 8, 2010, effective January 1, 2011.

Committee Comments

(January 1, 2011)

Paragraph (a)

The Committee was prompted to examine this issue by the decision in *Berry v. American Standard, Inc.*, 382 Ill. App. 3d 895 (5th Dist. 2008). The Committee believes that a trial court should have the discretion under subparagraph (a)(5) to permit the use of a party's discovery deposition at trial. It appears that there may be rare, but compelling, circumstances under which a party's discovery deposition should be permitted to be used. In the Committee's view, *Berry* presents such circumstances. Given that in most cases counsel will have the opportunity to preserve a party's testimony via an evidence deposition, it is expected that the circumstances that would justify use of a discovery deposition would be extremely limited.

This amendment applies to cases filed on or after the effective date.

Rule 213. Written Interrogatories to Parties

(a) Directing Interrogatories. A party may direct written interrogatories to any other party. A copy of the interrogatories shall be served on all other parties entitled to notice.

(b) Duty of Attorney. It is the duty of an attorney directing interrogatories to restrict them to the subject

matter of the particular case, to avoid undue detail, and to avoid the imposition of any unnecessary burden or expense on the answering party.

(c) Number of Interrogatories. Except as provided in subparagraph (j), a party shall not serve more than 30 interrogatories, including sub-parts, on any other party except upon agreement of the parties or leave of court granted upon a showing of good cause. A motion for leave of court to serve more than 30 interrogatories must be in writing and shall set forth the proposed interrogatories and the reasons establishing good cause for their use.

(d) Answers and Objections. Within 28 days after service of the interrogatories upon the party to whom they are directed, the party shall serve a sworn answer or an objection to each interrogatory, with proof of service upon all other parties entitled to notice. Any objection to an answer or to the refusal to answer an interrogatory shall be heard by the court upon prompt notice and motion of the party propounding the interrogatory. The answering party shall set forth in full each interrogatory being answered immediately preceding the answer. Sworn answers to interrogatories directed to a public or private corporation, or a partnership or association shall be made by an officer, partner, or agent, who shall furnish such information as is available to the party.

(e) Option to Produce Documents. When the answer to an interrogatory may be obtained from documents in the possession or control of the party on whom the interrogatory was served, it shall be a sufficient answer to the interrogatory to produce those documents responsive to the interrogatory. When a party elects to answer an interrogatory by the production of documents, that production shall comply with the requirements of Rule 214.

(f) Identity and Testimony of Witnesses. Upon written interrogatory, a party must furnish the identities and addresses of witnesses who will testify at trial and must provide the following information:

(1) *Lay Witnesses*. A "lay witness" is a person giving only fact or lay opinion testimony. For each lay witness, the party must identify the subjects on which the witness will testify. An answer is sufficient if it gives reasonable notice of the testimony, taking into account the limitations on the party's knowledge of the facts known by and opinions held by the witness.

(2) *Independent Expert Witnesses*. An "independent expert witness" is a person giving expert testimony who is not the party, the party's current employee, or the party's retained expert. For each independent expert witness, the party must identify the subjects on which the witness will testify and the opinions the party expects to elicit. An answer is sufficient if it gives reasonable notice of the testimony, taking into account the limitations on the party's knowledge of the facts known by and opinions held by the witness.

(3) *Controlled Expert Witnesses*. A "controlled expert witness" is a person giving expert testimony who is the party, the party's current employee, or the party's retained expert. For each controlled expert witness, the party must identify: (i) the subject matter on which the witness will testify; (ii) the conclusions and opinions of the witness and the bases therefor; (iii) the qualifications of the witness; and (iv) any reports prepared by the witness about the case.

(g) Limitation on Testimony and Freedom to Cross-Examine. The information disclosed in answer to a Rule 213(f) interrogatory, or in a discovery deposition, limits the testimony that can be given by a witness on direct examination at trial. Information disclosed in a discovery deposition need not be later specifically identified in a Rule 213(f) answer, but, upon objection at trial, the burden is on the proponent of the witness to prove the information was provided in a Rule 213(f) answer or in the discovery deposition. Except upon a showing of good cause, information in an evidence deposition not previously disclosed in a Rule 213(f) interrogatory answer or in a discovery deposition shall not be admissible upon objection at trial.

Without making disclosure under this rule, however, a cross-examining party can elicit information, including opinions, from the witness. This freedom to cross-examine is subject to a restriction that applies in actions that involve multiple parties and multiple representation. In such actions, the cross-examining party may not elicit undisclosed information, including opinions, from the witness on an issue on which its position is aligned with that of the party doing the direct examination.

(h) Use of Answers to Interrogatories. Answers to interrogatories may be used in evidence to the same extent as a discovery deposition.

(i) Duty to Supplement. A party has a duty to seasonably supplement or amend any prior answer or response whenever new or additional information subsequently becomes known to that party.

(j) The Supreme Court, by administrative order, may approve standard forms of interrogatories for different classes of cases.

(k) Liberal Construction. This rule is to be liberally construed to do substantial justice between or among the parties.

Amended July 1, 1985, effective August 1, 1985; amended June 1, 1995, effective January 1, 1996; amended April 3, 1997, effective May 1, 1997; amended March 28, 2002, effective July 1, 2002; amended December 6, 2006, effective January 1, 2007; amended Dec. 29, 2017, eff. Jan. 1, 2018.

SEE ADMINISTRATIVE ORDER ENTERED NOVEMBER 27, 2002

Committee Comments

(March 28, 2002)

Paragraph (f)

The purpose of this paragraph is to prevent unfair surprise at trial, without creating an undue burden on the parties before trial. The paragraph divides witnesses into three categories, with separate disclosure requirements for each category.

"Lay witnesses" include persons such as an eyewitness to a car accident. For witnesses in this category, the party must identify the "subjects" of testimony—meaning the topics, rather than a summary. An answer must describe the subjects sufficiently to give "reasonable notice" of the testimony, enabling the opposing attorney to decide whether to depose the witness, and on what topics. In the above example, a proper answer might state that the witness will testify about: "(1) the path of travel and speed of the vehicles before impact, (2) a description of the impact, and (3) the lighting and weather conditions at the time of the accident." The answer would not be proper if it said only that the witness will testify about: "the accident." Requiring disclosure of only the subjects of lay witness testimony represents a change in the former rule, which required detailed disclosures regarding the subject matter, conclusions, opinions, bases and qualifications of any witness giving any opinion testimony, including lay opinion testimony. Experience has shown that applying this detailed-disclosure requirement to lay witnesses creates a serious burden without corresponding benefit to the opposing party.

"Independent expert witnesses" include persons such as a police officer who gives expert testimony based on the officer's investigation of a car accident, or a doctor who gives expert testimony based on the doctor's treatment of the plaintiff's injuries. For witnesses in this category, the party must identify the "subjects" (meaning topics) on which the witness will testify and the "opinions" the party expects to elicit. The limitations on the party's knowledge of the facts known by and opinions held by the witness often will be important in applying the "reasonable notice" standard. For example, a treating doctor might refuse to speak with the plaintiff's attorney, and the doctor cannot be contacted by the defendant's attorney, so the opinions set forth in the medical records about diagnosis, prognosis, and cause of injury might be all that the two attorneys know about the doctor's opinions. In these circumstances, the party intending to call the doctor need set forth only a brief statement of the opinions it expects to elicit. On the other hand, a party might know that a treating doctor will testify about another doctor's compliance with the standard of care, or that a police officer will testify to an opinion based on work done outside the scope of the officer's initial investigation. In these examples, the opinions go beyond those that would be reasonably expected based on the witness' apparent involvement in the case. To prevent unfair surprise in circumstances like these, an answer must set forth a more detailed statement of the opinions the party expects to elicit. Requiring disclosure of only the "subjects" of testimony and the "opinions" the party expects to elicit represents a change in the former rule, which required detailed disclosures about the subject matter, conclusions, opinions, bases, and qualifications

of all witnesses giving opinion testimony, including expert witnesses over whom the party has no control. Experience has shown that the detailed-disclosure requirement is too demanding for independent expert witnesses.

"Controlled expert witnesses" include persons such as retained experts. The party can count on full cooperation from the witnesses in this category, so the amended rule requires the party to provide all of the details required by the former rule. In particular, the requirement that the party identify the "subject matter" of the testimony means that the party must set forth the gist of the testimony on each topic the witness will address, as opposed to setting forth the topics alone.

A party may meet its disclosure obligation in part by incorporating prior statements or reports of the witness. The answer to the Rule 213(f) interrogatories served on behalf of a party may be sworn to by the party or the party's attorney.

Paragraph (g)

Parties are to be allowed a full and complete cross-examination of any witness and may elicit additional undisclosed opinions in the course of cross-examination. This freedom to cross-examine is subject to a restriction that, for example, prevents a party from eliciting previously undisclosed contributory negligence opinions from a coparty's expert.

Note that the exception to disclosure described in this paragraph is limited to the cross-examining party. It does not excuse the party calling the witness from the duty to supplement described in paragraph (i).

Paragraph (i)

The material deleted from this paragraph now appears in modified form in paragraph (g).

Paragraph (k)

The application of this rule is intended to do substantial justice between the parties. This rule is intended to be a shield to prevent unfair surprise but not a sword to prevent the admission of relevant evidence on the basis of technicalities. The purpose of the rule is to allow for a trial to be decided on the merits. The trial court should take this purpose into account when a violation occurs and it is ordering appropriate relief under Rule 219(c).

The rule does not apply to demonstrative evidence that is intended to explain or convey to the trier of fact the theories expressed in accordance with this rule.

Committee Comments

(Revised June 1, 1995)

Paragraph (a)

The provision of former Rule 19-11(1) as to who is to answer interrogatories served on corporations, partnerships, and associations appears in paragraph (d) of this rule. The provisions of former Rule 19-11(1) stating that both interrogatories and depositions could be employed and that the court may issue protective orders were deleted because these matters are covered in Rules 201(a) and (c). A prior requirement that the written interrogatories be spaced so as to permit the answering party to answer upon the interrogatory served upon him has been amended to eliminate the spacing requirement, primarily because of the practical and customary way in which interrogatories are answered.

Paragraph (b)

Like paragraph (a) of Rule 201, which cautions against duplication, this provision states the general policy

of the rules for the guidance for the court when it is called upon to frame protective orders or dispose of objections to interrogatories as provided in paragraph (d) of Rule 213.

Paragraph (c)

Paragraph (c) is new. Because of widespread complaints that some attorneys engage in the practice of submitting needless, repetitious, and burdensome interrogatories, paragraph (c) limits the number of all interrogatories, regardless of when propounded, to 30 (including subparts), unless "good cause" requires a greater number.

Paragraph (d)

Paragraph (d) is derived from former Rules 19-11(2) and (3). This paragraph embodies a number of changes in the present practice. The time for answering interrogatories is fixed at 28 days instead of 30 (as in former Rule 19-11(2)), consistent with the committee's general policy of establishing time periods that are multiples of seven days. Under former Rule 19-11(3), the time for making objections is 15 days. Paragraph (d) increases this to 28 days, making the time limit for answering and objecting the same. The other change in Illinois practice effected by paragraph (d) is the requirement that motions to hear objections to interrogatories must be noticed by the party seeking to have the interrogatories answered. Under former Rule 19-11(3) the objection must be noticed by the party making it. This change was made because the committee believes the party seeking the information should have the burden of seeking a disposition of the objection, and that this will tend to reduce the number of rulings that are necessary by automatically suspending interrogatories which a party is not seriously interested in pursuing. The last phrase provides that the person answering must furnish such information as is available to the party. This phrase was added, as was the same provision to Federal Rule 33 in 1946, to make certain that a corporation, partnership, or association may not avoid answering an interrogatory by disclaiming personal knowledge of the matter on the part of the answering official.

Paragraph (e)

Paragraph (e) has been amended to require a party who elects to answer an interrogatory by referring to documents, to produce the responsive documents as part of the party's answer. When a party elects to respond to an interrogatory by the production of documents, that production must comply with the requirements of Rule 214.

Paragraph (f)

Paragraph (f) now requires a party to serve the identity and location of witnesses who will testify at trial, together with the subject of their testimony. This is a departure from the previously recognized law. This paragraph, as well as others contained in these rules, imposes a "seasonable" duty to supplement.

Paragraph (g)

In light of the elimination of former Supreme Court Rule 220, the definition of an opinion witness is now a person who will offer "any" opinion testimony. It is the Committee's belief that in order to avoid surprise, the subject matter of all opinions must be disclosed pursuant to this rule and Supreme Court Rule 218, and that no new or additional opinions will be allowed unless the interests of justice require otherwise. For purposes of this paragraph, there is no longer a distinction between retained and nonretained experts. Further, upon written interrogatories, a party must state the subject matter to be testified to, the conclusions, opinions and qualifications of opinion witnesses, and provide all reports of opinion witnesses.

Paragraph (h)

Paragraph (h) is derived from former Rule 19-11(4), which provided that answers to interrogatories could

be used to the same extent as the deposition of an adverse party. Under former Rule 19-11(1), interrogatories can be directed only to adverse parties; hence the provision in former Rule 19-11(4) to the effect that the answers could be used as could a deposition of an adverse party. Paragraph (a) of the new rule provides that interrogatories can be directed to any party. Accordingly, paragraph (h) of the new rule provides that the answers can be used to the same extent as a discovery deposition. Former Rule 19-11(4) also contained a statement on the scope of interrogatories, equating the permissible scope of inquiry to that permitted in the taking of a deposition. This provision was deleted as unnecessary in view of the provisions of Rule 201(b)(1).

Paragraph (i)

With regard to paragraph (i), the new rule imposes a "seasonable" duty to supplement or amend prior answers when new or additional information becomes known to that party. This is a change from previous discovery requirements and thus eliminates the need for supplemental interrogatories unless different information is sought. The Committee believes that the definition of "seasonable" varies by the facts of each case and by the type of case, but in no event should it allow a party or an attorney to fail to comply with the spirit of this rule by either negligent or wilful noncompliance.

Paragraph (j)

In an effort to avoid discovery disputes, the practitioner is encouraged to utilize interrogatories approved by the Supreme Court pursuant to paragraph (j) whenever possible.

~~APPENDIX~~

~~IN THE SUPREME COURT OF~~
~~THE STATE OFILLINOIS~~

~~STANDARD INTERROGATORIES~~
~~UNDER SUPREME COURT RULE 213(j)~~

~~Under amended Supreme Court Rule 213(j) (eff. January 1, 1996), "[t]he Supreme Court, by administrative order, may approve standard forms of interrogatories for different classes of cases." The committee comments to this rule state, "In an effort to avoid discovery disputes, the practitioner is encouraged to utilize interrogatories approved by the Supreme Court pursuant to paragraph (j) whenever possible." The following interrogatories are hereby approved pursuant to that amended rule. A party may use one or more interrogatories which are part of a form set of interrogatories. Any such interrogatory so used shall be counted as one interrogatory in determining the total number of interrogatories propounded, regardless of any subparts or multiple inquiries therein. A party may combine form interrogatories with other interrogatories, subject to applicable limitations as to number. A party shall avoid propounding a form interrogatory which has no application to the case.~~

~~Counsel should note other provisions of amended Rule 213 that are reflected in these standard interrogatories, and which are applicable to nonstandard interrogatories as well. As the committee comments to amended Rule 213(a) indicate, "[the] prior requirement that the written interrogatories be spaced so as to permit the answering party to answer upon the interrogatory served upon him has been amended to eliminate the spacing requirement, primarily because of the practical and customary way in which interrogatories are answered." Although the proponent of interrogatories may still use spacing between his or her interrogatories, these standard interrogatories do not.~~

~~Also, amended Rule 213(d) retains the requirement that "[w]ithin 28 days after service of the interrogatories upon the party to whom they are directed, the party shall serve a *sworn answer* or an objection~~

to each interrogatory, with proof of service upon all other parties entitled to notice. *** The answering party shall set forth in full each interrogatory being answered immediately preceding the answer." (Emphasis added.) While the supreme court envisions that parties will continue with the practice of creating a new document in response to interrogatories, and it is the duty of the respondent to interrogatories to attest to the truthfulness of his or her answers, these standard interrogatories include sample attestation clauses.

Finally, under amended Supreme Court Rule 213(i), a party has a duty to seasonably supplement or amend any prior answer or response whenever new or additional information subsequently becomes known to that party. The proponent of the interrogatories may wish to include a reminder of this duty in the interrogatories.

Amended Interrogatories Under Rule 213(j)

Medical Malpractice Interrogatories to Defendant Doctor (amended May 30, 2008, eff. immediately)
All Others (amended June 2, 2005, eff. immediately)

Motor Vehicle Interrogatories to Plaintiffs

1. State your full name, as well as your current residence address, date of birth, marital status, driver's license number and issuing state, and the last four digits of your social security number.

2. State the full name and current residence address of each person who witnessed or claims to have witnessed the occurrence that is the subject of this suit (hereinafter referred to simply as the occurrence).

3. State the full name and current residence address of each person, not named in interrogatory No. 2 above, who was present and/or claims to have been present at the scene immediately before, at the time of, and/or immediately after the occurrence.

4. As a result of the occurrence, were you made a defendant in any criminal or traffic case? If so, state the court, the caption, the case number, the charge or charges filed against you, whether you pleaded guilty thereto and the final disposition.

5. Describe the personal injuries sustained by you as a result of the occurrence.

6. With regard to your injuries, state:

(a) The name and address of each attending physician and/or health care professional;

(b) The name and address of each consulting physician and/or other health care professional;

(c) The name and address of each person and/or laboratory taking any X ray, MRI and/or other radiological tests of you;

(d) The date or inclusive dates on which each of them rendered you service;

(e) The amounts to date of their respective bills for services; and

(f) From which of them you have written reports.

7. As the result of your personal injuries, were you a patient or outpatient in any hospital and/or clinic? If so, state the names and addresses of all hospitals and/or clinics, the amounts of their respective bills and the date or inclusive dates of their services.

8. As the result of your personal injuries, were you unable to work? If so, state:

(a) The name and address of your employer, if any, at the time of the occurrence, your wage and/or salary, and the name of your supervisor and/or foreperson;

(b) The date or inclusive dates on which you were unable to work;

(c) The amount of wage and/or income loss claimed by you; and

(d) The name and address of your present employer and your wage and/or salary.

9. State any and all other expenses and/or losses you claim as a result of the occurrence. As to each expense and/or loss, state the date or dates it was incurred, the name of the person, firm and/or company to whom such amounts are owed, whether the expense and/or loss in question has been paid and, if so, by whom

it was so paid, and describe the reason and/or purpose for each expense and/or loss.

10. Had you suffered any personal injury or prolonged, serious and/or chronic illness prior to the date of the occurrence? If so, state when and how you were injured and/or ill, where you were injured and/or ill, describe the injuries and/or illness suffered, and state the name and address of each physician, or other health care professional, hospital and/or clinic rendering you treatment for each injury and/or chronic illness.

11. Are you claiming any psychiatric, psychological and/or emotional injuries as a result of this occurrence? If so, state:

(a) The name of any psychiatric, psychological and/or emotional injury claimed, and the name and address of each psychiatrist, physician, psychologist, therapist or other health care professional rendering you treatment for each injury;

(b) Whether you had suffered any psychiatric, psychological and/or emotional injury prior to the date of the occurrence; and

(c) If (b) is in the affirmative, please state when and the nature of any psychiatric, psychological and/or emotional injury, and the name and address of each psychiatrist, physician, psychologist, therapist or other health care professional rendering you treatment for each injury.

12. Have you suffered any personal injury or prolonged, serious and/or chronic illness since the date of the occurrence? If so, state when you were injured and/or ill, where and how you were injured and/or ill, describe the injuries and/or the illness suffered, and state the name and address of each physician or other health care professional, hospital and/or clinic rendering you treatment for each injury and/or chronic illness.

13. Have you ever filed any other suits for your own personal injuries? If so, state the nature of the injuries claimed, the courts and the captions in which filed, the years filed, and the titles and docket numbers of the suits.

14. Have you ever filed a claim for and/or received any workers' compensation benefits? If so, state the name and address of the employer against whom you filed for and/or received benefits, the date of the alleged accident or accidents, the description of the alleged accident or accidents, the nature of your injuries claimed and the name of the insurance company, if any, who paid any such benefits.

15. Were any photographs, movies and/or videotapes taken of the scene of the occurrence or of the persons and/or vehicles involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, and the name, address, occupation and employer of the person taking them.

16. Have you (or has anyone acting on your behalf) had any conversations with any person at any time with regard to the manner in which the occurrence complained of occurred, or have you overheard any statements made by any person at any time with regard to the injuries complained of by plaintiff or to the manner in which the occurrence complained of occurred? If the answer to this interrogatory is in the affirmative, state the following:

(a) The date or dates of such conversations and/or statements;

(b) The place of such conversations and/or statements;

(c) All persons present for the conversations and/or statements;

(d) The matters and things stated by the person in the conversations and/or statements;

(e) Whether the conversation was oral, written and/or recorded; and

(f) Who has possession of the statement if written and/or recorded.

17. Do you know of any statements made by any person relating to the occurrence? If so, give the name and address of each such witness, the date of the statement, and state whether such statement was written and/or oral.

18. Had you consumed any alcoholic beverage within 12 hours immediately prior to the occurrence? If so, state the names and addresses of those from whom it was obtained, where it was consumed, the particular kind and amount of alcoholic beverage so consumed by you, and the names and current residence addresses

of all persons known by you to have knowledge concerning the consumption of alcoholic beverages.

19. Have you ever been convicted of a misdemeanor involving dishonesty, false statement or a felony? If so, state the nature thereof, the date of the conviction, and the court and the caption in which the conviction occurred. For the purpose of this interrogatory, a plea of guilty shall be considered as a conviction.

20. Had you used any drugs or medications within 24 hours immediately prior to the occurrence? If so, state the names and addresses of those from whom it was obtained, where it was used, the particular kind and amount of drug or medication so used by you, and the names and current residence addresses of all persons known by you to have knowledge concerning the use of said drug or medication.

21. Have you received any payment and/or other consideration from any source in compensation for the injuries alleged in your complaint? If your answer is in the affirmative, state:

(a) The amount of such payment and/or other consideration received;

(b) The name of the person, firm, insurance company and/or corporation making such payment or providing other consideration and the reason for the payment and/or other consideration; and

(c) Whether there are any documents evidencing such payment and/or other consideration received.

22. State the name and address of the registered owner of each vehicle involved in the occurrence.

23. Were you the owner and/or driver of the vehicle involved in the occurrence? If so, state whether the vehicle was repaired and, if so, state when, where, by whom, and the cost of the repairs.

24. What was the purpose and/or use for which the vehicle was being operated at the time of the occurrence?

25. State the names and addresses of all persons who have knowledge of the purpose for which the vehicle was being used at the time of the occurrence.

26. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial and all other information required for each witness.

27. List the names and addresses of all other persons (other than yourself and persons heretofore listed) who have knowledge of the facts of the occurrence and/or the injuries and damages claimed to have resulted therefrom.

28. Identify any statements, information and/or documents known to you and requested by any of the foregoing interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each interrogatory, specify the legal basis for the claim as required by Illinois Supreme Court Rule 201(n).

ATTESTATION

STATE OF ILLINOIS)

) SS.

COUNTY OF _____)

_____, being first duly sworn on oath, deposes and states that he/she is a plaintiff in the above-captioned matter; that he/she has read the foregoing document, and the answers made herein are true, correct and complete to the best of his/her knowledge and belief.

_____

SIGNATURE

SUBSCRIBED and SWORN to before me this

_____ day of _____, 19___.

_____

NOTARY PUBLIC

Motor Vehicle Interrogatories to Defendants

1. State the full name of the defendant answering, as well as your current residence address, date of birth, marital status, driver's license number and issuing state, and the last four digits of your social security number, and if different give the full name, as well as the current residence address, date of birth, marital status, driver's license number and issuing state, and the last four digits of the social security number of the individual signing these answers.

2. State the full name and current residence address of each person who witnessed or claims to have witnessed the occurrence that is the subject of this suit.

3. State the full name and current residence address of each person not named in interrogatory No. 2 above who was present and/or claims to have been present at the scene immediately before, at the time of, and/or immediately after the occurrence.

4. As a result of the occurrence, were you made a defendant in any criminal or traffic case? If so, state the court, the caption, the case number, the charge or charges filed against you, whether you pleaded guilty thereto and the final disposition.

5. Were you the owner and/or driver of the vehicle involved in the occurrence? If so, state whether the vehicle was repaired and, if so, state when, where, by whom, and the cost of the repairs.

6. Were you the owner and/or driver of any vehicle involved in the occurrence? If so, state whether you were named or covered under any policy, or policies, of liability insurance effective on the date of the occurrence and, if so, state the name of each such company or companies, the policy number or numbers, the effective period(s) and the maximum liability limits for each person and each occurrence, including umbrella or excess insurance coverage, property damage and medical payment coverage.

7. Do you have any information:

(a) That any plaintiff was, within the five years immediately prior to the occurrence, confined in a hospital and/or clinic, treated by a physician and/or other health professional, or x-rayed for any reason other than personal injury? If so, state each plaintiff so involved, the name and address of each such hospital and/or clinic, physician, technician and/or other health care professional, the approximate date of such confinement or service and state the reason for such confinement or service;

(b) That any plaintiff has suffered any serious personal injury and/or illness prior to the date of the occurrence? If so, state the name of each plaintiff so involved and state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;

(c) That any plaintiff has suffered any serious personal injury and/or illness since the date of the occurrence? If so, state the name of each plaintiff so involved and state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;

(d) That any plaintiff has ever filed any other suit for his or her own personal injuries? If so, state the name of each plaintiff so involved and state the court and caption in which filed, the year filed, the title and docket number of the case.

8. Were any photographs, movies and/or videotapes taken of the scene of the occurrence or of the persons and/or vehicles involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, and the name, address and occupation and employer of the person taking them.

9. Have you (or has anyone acting on your behalf) had any conversations with any person at any time with regard to the manner in which the occurrence complained of occurred, or have you overheard any statements made by any person at any time with regard to the injuries complained of by plaintiff or the manner in which the occurrence complained of occurred? If the answer to this interrogatory is in the affirmative, state the following:

(a) The date or dates of such conversations and/or statements;

(b) The place of such conversations and/or statements;

(c) All persons present for the conversations and/or statements;

(d) The matters and things stated by the person in the conversations and/or statements;

(e) Whether the conversation was oral, written and/or recorded; and

(f) Who has possession of the statement if written and/or recorded.

10. Do you know of any statements made by any person relating to the occurrence complained of by the plaintiff? If so, give the name and address of each such witness and the date of the statement, and state whether such statement was written and/or oral.

11. Had you consumed any alcoholic beverage within 12 hours immediately prior to the occurrence? If so, state the names and addresses of those from whom it was obtained, where it was consumed, the particular kind and amount of alcoholic beverage so consumed by you, and the names and current residence addresses of all persons known by you to have knowledge concerning the consumption of the alcoholic beverages.

12. Have you ever been convicted of a misdemeanor involving dishonesty, false statement or a felony? If so, state the nature thereof, the date of the conviction, and the court and the caption in which the conviction occurred. For the purpose of this interrogatory, a plea of guilty shall be considered as a conviction.

13. Had you used any drugs or medications within 24 hours immediately prior to the occurrence? If so, state the names and addresses of those from whom it was obtained, where it was used, the particular kind and amount of drug or medication so used by you, and the names and current residence addresses of all persons known by you to have knowledge concerning the use of the drug or medication.

14. Were you employed on the date of the occurrence? If so, state the name and address of your employer, and the date of employment and termination, if applicable. If your answer is in the affirmative, state the position, title and nature of your occupational responsibilities with respect to your employment.

15. What was the purpose and/or use for which the vehicle was being operated at the time of the occurrence?

16. State the names and addresses of all persons who have knowledge of the purpose for which the vehicle was being used at the time of the occurrence.

17. State the name and address of the registered owner of each vehicle involved in the occurrence.

18. Have you ever had your driver's license suspended or revoked? If so, state whether it was suspended or revoked, the date it was suspended or revoked, the reason for the suspension or revocation, the period of time for which it was suspended or revoked, and the state that issued the license.

19. Do you have or have you had any restrictions on your driver's license? If so, state the nature of the restrictions.

20. Do you have any medical and/or physical condition which required a physician's report and/or letter of approval in order to drive? If so, state the nature of the medical and/or physical condition, the physician or other health care professional who issued the letter and/or report, and the names and addresses of any physician or other health care professional who treated you for this condition prior to the occurrence.

21. State the name and address of any physician, ophthalmologist, optician or other health care professional who performed any eye examination of you within the last five years and the dates of each such examination.

22. State the name and address of any physician or other health care professional who examined and/or treated you within the last 10 years and the reason for such examination and/or treatment.

23. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial and all other information required for each witness.

24. List the names and addresses of all other persons (other than yourself and persons heretofore listed) who have knowledge of the facts of the occurrence and/or of the injuries and damages claimed to have resulted therefrom.

25. Identify any statements, information and/or documents known to you and requested by any of the foregoing interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each interrogatory, specify the legal basis for the claim as required by Illinois

Supreme Court Rule 201(n).

ATTESTATION

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

_____, being first duly sworn on oath, deposes and states that he/she is a defendant in the above-captioned matter, that he/she has read the foregoing document, and the answers made herein are true, correct and complete to the best of his/her knowledge and belief.

_____
SIGNATURE

SUBSCRIBED and SWORN to before me this
_____ day of _____, 19___.

_____
NOTARY PUBLIC

Matrimonial Interrogatories

1. State your full name, current address, date of birth and the last four digits of your social security number.

2. List all employment held by you during the preceding three years and with regard to each employment state:

(a) The name and address of each employer;

(b) Your position, job title or description;

(c) If you had an employment contract;

(d) The date on which you commenced your employment and, if applicable, the date and reason for the termination of your employment;

(e) Your current gross and net income per pay period;

(f) Your gross income as shown on the last W-2 tax and wage statement received by you, your social security wages as shown on the last W-2 tax and wage statement received by you, and the amounts of all deductions shown thereon; and

(g) All additional benefits or perquisites received from your employment stating the type and value thereof.

3. During the preceding three years, have you had any source of income other than from your employment listed above? If so, with regard to each source of income, state the following:

(a) The source of income, including the type of income and name and address of the source;

(b) The frequency in which you receive income from the source;

(c) The amount of income received by you from the source during the immediately preceding three years; and

(d) The amount of income received by you from the source for each month during the immediately preceding three years.

4. Do you own any interest in real estate? If so, with regard to each such interest state the following:

(a) The size and description of the parcel of real estate, including improvements thereon;

(b) The name, address and interest of each person who has or claims to have an ownership interest in

the parcel of real estate;

(c) The date your interest in the parcel of real estate was acquired;

(d) The consideration you transferred or paid for your interest in the parcel of real estate;

(e) Your estimate of the current fair market value of the parcel of real estate and your interest therein; and

(f) The amount of any indebtedness owed on the parcel of real estate and to whom.

5. For the preceding three years, list the names and addresses of all associations, partnerships, corporations, enterprises or entities in which you have an interest or claim any interest, the nature of your interest or claim of interest therein, the amount of percentage of your interest or claim of interest therein, and an estimate of the value of your interest therein.

6. During the preceding three years, have you had any account or investment in any type of financial institution, individually or with another or in the name of another, including checking accounts, savings accounts, certificates of deposit and money market accounts? If so, with regard to each such account or investment, state the following:

(a) The type of account or investment;

(b) The name and address of the financial institution;

(c) The name and address of each person in whose name the account is held; and

(d) Both the high and the low balance of the account or investment, stating the date of the high balance and the date of the low balance.

7. During the preceding three years, have you been the holder of or had access to any safety deposit boxes? If so, state the following:

(a) The name of the bank or institution where such box is located;

(b) The number of each box;

(c) A description of the contents of each box during the immediately preceding three years and as of the date of the answer; and

(d) The name and address of any joint or co-owners of such safety deposit box or any trustees holding the box for your benefit.

8. During the immediately preceding three years, has any person or entity held cash or property on your behalf? If so, state:

(a) The name and address of the person or entity holding the cash or property; and

(b) The type of cash or property held and the value thereof.

9. During the preceding three years, have you owned any stocks, bonds, securities or other investments, including savings bonds? If so, with regard to each such stock, bond, security or investment state:

(a) A description of the stock, bond, security or investment;

(b) The name and address of the entity issuing the stock, bond, security or investment;

(c) The present value of such stock, bond, security or investment;

(d) The date of acquisition of the stock, bond, security or investment;

(e) The cost of the stock, bond, security or investment;

(f) The name and address of any other owner or owners in such stock, bond, security or investment; and

(g) If applicable, the date sold and the amount realized therefrom.

10. Do you own or have any incidents of ownership in any life, annuity or endowment insurance policies? If so, with regard to each such policy state:

(a) The name of the company;

(b) The number of the policy;

(c) The face value of the policy;

(d) The present value of the policy;

(e) The amount of any loan or encumbrance on the policy;

(f) The date of acquisition of the policy; and

(g) With regard to each policy, the beneficiary or beneficiaries.

11. Do you have any right, title, claim or interest in or to a pension plan, retirement plan or profit sharing plan, including, but not limited to, individual retirement accounts, 401(k) plans and deferred compensation plans? If so, with regard to each such plan state:

(a) The name and address of the entity providing the plan;

(b) The date of your initial participation in the plan; and

(c) The amount of funds currently held on your behalf under the plan.

12. Do you have any outstanding indebtedness or financial obligations, including mortgages, promissory notes, or other oral or written contracts? If so, with regard to each obligation state the following:

(a) The name and address of the creditor;

(b) The form of the obligation;

(c) The date the obligation was initially incurred;

(d) The amount of the original obligation;

(e) The purpose or consideration for which the obligation was incurred;

(f) A description of any security connected with the obligation;

(g) The rate of interest on the obligation;

(h) The present unpaid balance of the obligation;

(i) The dates and amounts of installment payments; and

(j) The date of maturity of the obligation.

13. Are you owed any money or property? If so, state:

(a) The name and address of the debtor;

(b) The form of the obligation;

(c) The date the obligation was initially incurred;

(d) The amount of the original obligation;

(e) The purpose or consideration for which the obligation was incurred;

(f) The description of any security connected with the obligation;

(g) The rate of interest on the obligation;

(h) The present unpaid balance of the obligation;

(i) The dates and amounts of installment payments; and

(j) The date of maturity of the obligation.

14. State the year, make and model of each motor or motorized vehicle, motor or mobile home and farm machinery or equipment in which you have an ownership, estate, interest or claim of interest, whether individually or with another, and with regard to each item state:

(a) The date the item was acquired;

(b) The consideration paid for the item;

(c) The name and address of each other person who has a right, title, claim or interest in or to the item;

(d) The approximate fair market value of the item; and

(e) The amount of any indebtedness on the item and the name and address of the creditor.

15. Have you purchased or contributed towards the payment for or provided other consideration or

improvement with regard to any real estate, motorized vehicle, financial account or securities, or other property, real or personal, on behalf of another person or entity other than your spouse during the preceding three years. If so, with regard to each such transaction state:

(a) The name and address of the person or entity to whom you contributed;

(b) The type of contribution made by you;

(c) The type of property to which the contribution was made;

(d) The location of the property to which the contribution was made;

(e) Whether or not there is written evidence of the existence of a loan; and

(f) A description of the written evidence.

16. During the preceding three years, have you made any gift of cash or property, real or personal, to any person or entity not your spouse? If so, with regard to each such transaction state:

(a) A description of the gift;

(b) The value of the gift;

(c) The date of the gift;

(d) The name and address of the person or entity receiving the gift;

(e) Whether or not there is written evidence of the existence of a gift; and

(f) A description of the written evidence.

17. During the preceding three years, have you made any loans to any person or entity not your spouse and, if so, with regard to each such loan state:

(a) A description of the loan;

(b) The value of the loan;

(c) The date of the loan;

(d) The name and address of the person or entity receiving the loan;

(e) Whether or not there is written evidence of the existence of a loan; and

(f) A description of the written evidence.

18. During the preceding three years, have you sold, transferred, conveyed, encumbered, concealed, damaged or otherwise disposed of any property owned by you and/or your spouse individually or collectively? If so, with regard to each item of property state:

(a) A description of the property;

(b) The current location of the property;

(c) The purpose or reason for the action taken by you with regard to the property;

(d) The approximate fair market value of the property;

(e) Whether or not there is written evidence of any such transaction; and

(f) A description of the written evidence.

19. During the preceding three years, have any appraisals been made with regard to any of the property listed by you under your answers to these interrogatories? If so, state:

(a) The name and address of the person conducting each such appraisal;

(b) A description of the property appraised;

(c) The date of the appraisal; and

(d) The location of any copies of each such appraisal.

20. During the preceding three years, have you prepared or has anyone prepared for you any financial statements, net worth statements or lists of assets and liabilities pertaining to your property or financial affairs? If so, with regard to each such document state:

(a) The name and address of the person preparing each such document;

(b) The type of document prepared;

(c) The date the document was prepared; and

(d) The location of all copies of each such document.

21. State the name and address of any accountant, tax preparer, bookkeeper and other person, firm or entity who has kept or prepared books, documents and records with regard to your income, property, business or financial affairs during the course of this marriage.

22. List all nonmarital property claimed by you, identifying each item of property as to the type of property, the date received, the basis on which you claim it is nonmarital property, its location, and the present value of the property.

23. List all marital property of this marriage, identifying each item of property as to the type of property, the basis on which you claim it to be marital property, its location, and the present value of the property.

24. What contribution or dissipation has your spouse made to the marital estate, including but not limited to each of the items or property identified in response to interrogatories No. 22 and No. 23 above, citing specifics, if any, for each item of property?

25. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial and all other information required for each witness.

26. Are you in any manner incapacitated or limited in your ability to earn income at the present time? If so, define and describe such incapacity or limitation, and state when such incapacity or limitation commenced and when it is expected to end.

27. Identify any statements, information and/or documents known to you and requested by any of the foregoing interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each interrogatory, specify the legal basis for the claim as required by Illinois Supreme Court Rule 201(n).

ATTESTATION

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

_____, being first duly sworn on oath, deposes and states that he/she is a _____ in the above-captioned matter, that he/she has read the foregoing document, and the answers made herein are true, correct and complete to the best of his/her knowledge and belief.

_____
SIGNATURE

SUBSCRIBED and SWORN to before me this
_____ day of _____, 19___.

_____
NOTARY PUBLIC

Medical Malpractice Interrogatories to Plaintiff

1. State your full name, as well as your current residence address, the last four digits of your social security number, date and place of birth, and any other name by which you have ever been known.

2. Describe the acts and/or omissions of the defendant(s), *i.e.*, the specific diagnosis, procedure, test, therapy, treatment or other type of healing arts ministration which you claim caused or contributed to the

injuries for which you seek damages and, as to each, state:

(a) The date or dates thereof;

(b) The name and address of each witness;

(c) The names and addresses of all other persons having knowledge thereof and as to each such person the basis for his or her knowledge; and

(d) The location of any and all documents, including without limitation, hospital and medical records reflecting such acts and/or omissions.

3. State the full name, last known address, telephone number, occupation and/or profession, employer or business affiliation, and relationship to you of each person who has or claims to have knowledge that the defendant(s) deviated from any applicable standard of care in relation to you. As to each such person, state:

(a) The nature of such knowledge;

(b) The manner whereby it was acquired;

(c) The date or dates upon which such knowledge was acquired; and

(d) The identity and location of any and all documents reflecting such deviation.

4. Please state the name, address and specialty, if any, of all treating physicians, nurses, medical technicians or other persons practicing the healing arts in any of its branches with whom you or your attorneys have discussed any of the following:

(a) The standard of care owed to you by the defendant(s);

(b) The negligent acts and/or omissions described in your Complaint;

(c) The nature and extent of any injuries suffered by you; and

(d) The relationship between acts and/or omissions on the part of the defendant(s) and such injuries.

5. Do you know of any statements made by any person relating to the care and treatment or the damages alleged in the Complaint? If so, give the name and address of each such witness and the date of the statement, and state whether such statement was written or oral and if written the present location of each such statement.

6. State the name, author, publisher, title, and date of publication and specific provision of all medical texts, books, journals or other medical literature which you or your attorney intend to use as authority or reference in proving any of the allegations set forth in the Complaint.

7. Identify each and every rule, regulation, bylaw, protocol, standard or writing of whatsoever nature by any professional group, association, credentialing body, accrediting authority or governmental agency which you, or your attorney, may use at trial to establish the standard of care owed by the defendant(s), or the breach thereof.

8. Please identify and state the location of any of the following documents relating to the issues in this case which either bear the name, handwriting and/or signature of the defendant(s):

(a) Publications and/or professional literature authored by the defendant(s), including publication source and reference;

(b) Correspondence, records, memoranda or other writings prepared by the defendant(s) regarding your diagnosis, care and treatment, other than medical and hospital records in this case; and

(c) Documents prepared by persons other than you or your attorneys which contain the name of the defendant(s).

9. Describe the personal injuries sustained by you as the result of the negligent act or omissions described in your Complaint.

10. With regard to your injuries, state:

(a) The name and address of each attending physician and/or health care professional;

(b) The name and address of each consulting physician and/or other health care professional;

(c) The name and address of each person and/or laboratory taking any X ray, MRI and/or other radiological tests of you;

(d) The date or inclusive dates on which each of them rendered you service;

(e) The amounts to date of their respective bills for service; and

(f) From which of them you have written reports.

11. As the result of your personal injuries, were you a patient or outpatient in any hospital and/or clinic? If so, state the names and addresses of all hospitals and/or clinics, the amounts of their respective bills and the date or inclusive dates of their services.

12. As the result of your personal injuries, were you unable to work? If so, state:

(a) The name and address of your employer, if any, at the time of the acts and/or omissions described in the Complaint, your wage and/or salary, and the name of your supervisor and/or foreperson;

(b) The date or inclusive dates on which you were unable to work;

(c) The amount of wage and/or income loss claimed by you; and

(d) The name and address of your present employer and your wage and/or salary.

13. State any and all other expenses and/or losses you claim as a result of the acts and/or omissions described in the complaint. As to each expense and/or loss, state the date or dates it was incurred, the name of the person, firm and/or company to whom such amounts are owed, whether the expense and/or loss in question has been paid and, if so, by whom it was so paid, and describe the reason and/or purpose for each expense and/or loss.

14. Had you suffered any personal injury or prolonged, serious and/or chronic illness within ten (10) years prior to the date of the acts and/or omissions described in your complaint? If so, state when and how you were injured and/or ill, where you were injured and/or ill, describe the injuries and/or illness suffered, and state the name and address of each physician, or other health care professional, hospital and/or clinic rendering you treatment for each injury and/or chronic illness.

For each physician, or other heath care professional, hospital and/or clinic identified in the preceding paragraph, state the name and address of each insurance company or other entity (health maintenance organization, governmental public assistance program, *etc*.) which provided to you indemnity, reimbursement or other payment for the medical services received by you and as to each such payor, state the policy number, group number and/or identification number under which you were able to obtain such medical services.

15. Have you suffered any personal injury or prolonged, serious and/or chronic illness since the date of the negligent act or omission alleged in your complaint? If so, state when you were injured and/or ill, where and how you were injured and/or ill, describe the injuries and/or illness suffered, and state the name and address of each physician or other health care professional, hospital and/or clinic rendering you treatment for each injury and/or chronic illness.

16. Have any other suits been filed for your personal injuries preceding the filing of this lawsuit? If so, state the nature of the injuries claimed, the courts and the captions in which filed, the years filed, and the titles and docket numbers of the suits.

17. Have you filed a claim for and/or received workers' compensation benefits? If so, state the name and address of the employer, the date(s) of the accident(s), the identity of the insurance company that paid any such benefits and the case number(s) and jurisdiction(s) where filed.

18. Did defendant(s) or anyone associated with defendant(s) give you information or discuss with you the risks involved in the treatment to be given you? If so, state the date(s) and place(s)such information was given, the name(s) of the person(s) providing such information or engaging you in the discussion, and give a description of the information provided or discussed with you.

19. Are you claiming any psychiatric, psychological and/or emotional injuries as a result of the acts and/or omissions described in the complaint? If so, state:

(a) The name of any psychiatric, psychological and/or emotional injury claimed, and the name and

address of each psychiatrist, physician, psychologist, therapist or other health care professional rendering you treatment for each injury;

(b) Whether you had suffered any psychiatric, psychological and/or emotional injury prior to the date of the acts and/or omissions described in the complaint; and

(c) If (b) is in the affirmative, please state when and the nature of any psychiatric, psychological and/or emotional injury, and the name and address of each psychiatrist, physician, psychologist, therapist or other health care professional rendering you treatment for each injury.

20. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial and all other information required for each witness.

21. Do you have any photographs, movies and/or videotapes relating to the acts and/or omissions which are described in your complaint and/or the nature and extent of any injuries for which recovery is sought? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, who was displayed therein, who now has custody of them, and the name, address, occupation and employer of the person taking them.

22. Have you (or has anyone acting on your behalf) had any conversations with any person at any time with regard to the manner in which the care and treatment described in your complaint was provided, or have you overheard any statement made by any person at any time with regard to the injuries complained of by plaintiff or the manner in which the care and treatment alleged in the complaint was provided? If so, state:

(a) The date or dates of such conversation(s) and/or statement(s);

(b) The place of such conversation(s) and/or statement(s);

(c) All persons present for the conversation(s) and/or statement(s);

(d) The matters and things stated by the person in the conversation(s) and/or statement(s);

(e) Whether the conversation(s) was oral, written and/or recorded; and

(f) Who has possession of the statement(s) if written and/or recorded.

23. Have you received any payment and/or other consideration from any source in compensation for the injuries alleged in your complaint? If your answer is in the affirmative, state:

(a) The amount of such payment and/or other consideration received;

(b) The name of the person, firm, insurance company and/or corporation making such payment or providing other consideration and the reason for the payment and/or other consideration; and

(c) Whether there are any documents evidencing such payment and/or other consideration received.

24. Identify any statements, information and/or documents known to you and requested by any of the foregoing interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each interrogatory, specify the legal basis for the claim as required by Illinois Supreme Court Rule 201(n).

25. List the names and addresses of all persons (other than yourself and persons heretofore listed) who have knowledge of the facts regarding the care and treatment complained of in the complaint filed herein and/or of the injuries claimed to have resulted therefrom.

ATTESTATION

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

_____, being first duly sworn on oath, deposes and states that he/she is a _____ in the above-captioned matter, that he/she has read the

foregoing document, and the answers made herein are true, correct and complete to the best of his/her knowledge and belief.

_____

SIGNATURE

SUBSCRIBED and SWORN to before me this _____ day of _____, 19___.

_____

NOTARY PUBLIC

Medical Malpractice Interrogatories to Defendant Doctor

(Amended May 30, 2008, eff. immediately)

1. State your full name, professional and residence addresses, and attach a current copy of your *curriculum vitae* (CV). In the event you do not have a CV, state in detail your professional qualifications, including your education by identifying schools from which you graduated and the degrees granted and dates thereof, your medical internships and residencies, fellowships and a bibliography of your professional writing(s).

2. State whether you have held any position on a committee or with an administrative body at any hospital. If so, state when you held such position(s) and the duties and responsibilities involved in such position(s).

3. Have you ever been named as a defendant in a lawsuit arising from alleged malpractice or professional negligence? If so, state the court, the caption and the case number for each lawsuit.

4. Since the institution of this action, have you been asked to appear before or attend any meeting of a medical committee or official board of any medical society or other entity for the purpose of discussing this case? If so, state the date(s) of each such meeting and the name and address of the committee, society or other entity conducting each meeting.

5. Have you ever testified in court in a medical malpractice case? If so, state the court, the caption and the case number of each such case, the approximate date of your testimony, whether you testified as a treating physician or expert and whether you testified on your own behalf or on behalf of the defendant or the plaintiff.

6. Has your license to practice medicine ever been suspended or has any disciplinary action ever been taken against you in reference to your license? If so, state the specific disciplinary action taken, the date of the disciplinary action, the reason for the disciplinary action, the period of time for which the disciplinary action was effective and the name and address of the disciplinary entity taking the action.

7. State the exact dates and places on and at which you saw the plaintiff for the purpose of providing care or treatment.

8. State the name, author, publisher, title, date of publication and specific provision of all medical texts, books, journals or other medical literature which you or your attorney intend to use as authority or reference in defending any of the allegations set forth in the complaint.

9. Were you named or covered under any policy or policies of liability insurance at the time of the care and treatment alleged in the complaint? If so, state for each policy:

a. The name of the insurance company;

b. The policy number;

c. The effective policy period;

d. The maximum liability limits for each person and each occurrence, including umbrella and excess liability coverage; and

e. The named insured(s) under the policy.

10. Are you incorporated as a professional corporation? If so, state the legal name of your corporation and the name(s) and address(es) for all shareholders.

11. If you are not incorporated as a professional corporation, state whether you were affiliated with a corporate medical practice or partnership in any manner on the date of the occurrence alleged in the complaint. If so, state the name of the corporate medical practice or partnership, the nature of your affiliation and the dates of your affiliation.

12. Were you at any time an employee, agent, servant, shareholder or partner of [NAME OF HOSPITAL]? If so, state the date(s) and nature of your relationship.

13. State whether there were any policies, procedures, guidelines, rules or protocols for [THE PROCEDURE COMPLAINED OF] that were in effect at [NAME OF THE HOSPITAL WHERE PROCEDURE WAS PERFORMED] at the time of the care and/or treatment alleged in the complaint. If so, state:

a. Whether such policies, guidelines, rules or protocols are published and by whom;

b. The effective date of said policies, guidelines, rules or protocols;

c. Which medical professionals are bound by said policies, guidelines, rules or protocols;

d. Who is the administrator of any such policies, procedures, guidelines, rules and/or protocols; and

e. Whether the policies, guidelines, rules or protocols in effect at the time of the occurrence alleged in the complaint have been changed, amended, or altered since the occurrence. If so, state the change(s) and the date(s) of any such change(s).

14. Were any photographs, movies and/or videotapes taken of the plaintiff or of the procedures complained of? If so, state the date(s) on which such photographs, movies and/or videotapes were taken, who is displayed therein, who now has custody of them, and the name, address, occupation and employer of the person taking them.

15. Do you know of any statements made by any person relating to the care and treatment or the damages described in the complaint? If so, give the name and address of each such witness and the date of the statement, and state whether such statement was written or oral and if written the present location of each such statement.

16. Do you have any information:

a. That any plaintiff was, within the 10 years immediately prior to the care and treatment described in the complaint, confined in a hospital and/or clinic, treated by a physician and/or other health professional, or x-rayed for any reason other than personal injury? If so, state the name of each plaintiff so involved, the name and address of each such hospital and/or clinic, physician, technician and/or health-care professional, the approximate date of such confinement or service and state the reason for such confinement or service.

b. That any plaintiff has suffered any serious personal injury and/or illness within 10 years prior to the date of the occurrence? If so, state the name of each plaintiff so involved and state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered.

c. That any plaintiff has suffered any serious personal injury and/or illness since the date of the occurrence? If so, state the name of each plaintiff so involved and state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered.

d. That any other suits have been filed for any plaintiff's personal injuries? If so, state the name of each plaintiff involved, the nature of the injuries claimed, the court(s) and caption(s) in which filed, the year(s) filed, and the title(s) and docket number(s) of the suit(s).

e. That any claim for workers' compensation benefits has been filed for any plaintiff? If so, state the name and address of the employer, the date(s) of the accident(s), the identity of the insurance company that paid any such benefits and the case number(s) and jurisdiction(s) where filed.

17. Have you (or has anyone acting on your behalf) had any conversations with any person at any time

with regard to the manner in which the care and treatment described in the complaint was provided, or have you overheard any statement made by any person at any time with regard to the injuries complained of by the plaintiff or the manner in which the care and treatment described in the complaint was provided? If so, state the following:

a. The date or dates of such conversation(s) and/or statement(s);

b. The place of such conversation(s) and/or statements(s);

c. All persons present for the conversation(s) and/or statement(s);

d. The matters and things stated by the person in the conversation(s) and/or statement(s);

e. Whether the conversation(s) was oral, written and/or recorded; and

f. Who has possession of the statement(s) if written and/or recorded.

18. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial and all other information required for each witness.

19. Identify any statements, information and/or documents known to you and requested by any of the foregoing interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each interrogatory, specify the legal basis for the claim as required by Illinois Supreme Court Rule 201(n).

20. List the name and addresses of all persons (other than yourself and persons heretofore listed) who have knowledge of the facts regarding the care and treatment complained of in the complaint filed herein and/or of the injuries claimed to have resulted therefrom.

ATTESTATION

STATE OF ILLINOIS)

) SS.

COUNTY OF _____)

_____, being first duly sworn on oath, deposes and states that he/she is a defendant in the above-captioned matter; that he/she has read the foregoing document, and the answers made herein are true, correct and complete to the best of his/her knowledge and belief.

_____

SIGNATURE

SUBSCRIBED and SWORN to before me this
_____ day of _____, 20___.

_____

NOTARY PUBLIC

Medical Malpractice Interrogatories to Defendant Hospital

1. State the full name and address of the person answering and, if different, the full name and address of the individual signing the answers.

2. Do you know of any statements made by any person relating to the care and treatment of the plaintiff or the damages alleged of in the complaint? If so, give the name and address of each such witness and the date of the statement, and state whether such statement was written or oral and if written the present location of each such statement.

3. Has the [NAME OF DEFENDANT HOSPITAL] been named as a defendant in a lawsuit arising from alleged malpractice or professional negligence during the 8 year period preceding the filing of this lawsuit? If so, state the court, the caption and the case number for such lawsuit.

4. State whether [NAME OF DEFENDANT HOSPITAL] was named or covered under any policy or policies of medical liability insurance at the time of the care or treatment alleged in the complaint? If so, state for each policy:

a. The name of the insurance company;

b. The policy number;

c. The effective policy period;

d. The maximum liability limits for each person and each occurrence, including umbrella and excess liability coverage; and

e. The named insured(s) under each policy.

5. State whether any hearing dealing with mortality or morbidity was held regarding the care and treatment of the plaintiff alleged in the Complaint.

6. State the name, author, publisher, title, date of publication and specific provision of all medical texts, books, journals or other medical literature which you or your attorney intend to use as authority or reference in defending any of the allegations set forth in the Complaint.

7. Identify each and every rule, regulation, bylaw or other document of any hospital, association, licensing authority, accrediting authority or other private body which you, or your attorneys, may use at trial in defense of the allegations contained in the Complaint.

8. State whether there were any policies, procedures, guidelines, rules or protocols for [PROCEDURE COMPLAINED OF] in effect at [DEFENDANT HOSPITAL] at the time of the care and/or treatment of the plaintiff alleged in the Complaint. If so, state:

a. Whether such policies, procedures, opinions, rules or protocols are published and by whom;

b. The effective date of said policies, procedures, guidelines, rules or protocols;

c. Which medical professionals are bound by said policies, procedures, guidelines, rules or protocols;

d. Who is the administrator of any such policies, procedures, guidelines, rules or protocols; and

e. Whether the policies, procedures, guidelines, rules or protocols in effect at the time of the occurrence alleged in the Complaint have been changed, amended or altered after the occurrence. If so, state the change(s) and the date(s) of any such change(s).

9. Was [DEFENDANT DOCTOR] an employee, agent, servant, shareholder or partner of [DEFENDANT HOSPITAL] at the time of the care or treatment of the plaintiff alleged in the Complaint? If so, state with specificity the nature of the relationship.

10. State for each person who directly or indirectly was involved in the care or treatment of the plaintiff alleged in the Complaint:

a. That person's full name and current residence address;

b. The name and current address of that person's employer;

c. The employment relationship of that person with [DEFENDANT HOSPITAL];

d. The date(s) of such person's care or treatment, including a description of the care or treatment; and

e. The name and current address of any other individual present when the care or treatment was rendered.

11. Were any photographs, movies and/or videotapes taken of the plaintiff or of the procedures

complained of? If so, state the date(s) on which such photographs, movies and/or videotapes were taken, who is displayed therein, who now has custody of them, and the name, address, occupation and employer of the person taking them.

12. Have you (or has anyone acting on your behalf) had any conversations with any person at any time with regard to the manner in which the care and treatment alleged in the complaint was provided, or have you overheard any statement made by any persons at any time with regard to the injuries complained of by the plaintiff or the manner in which the care and treatment alleged in the complaint was provided? If so, state:

a. The date or dates of such conversation(s) and/or statements(s);

b. The place of such conversation(s) and/or statement(s);

c. All persons present for the conversation(s) and/or statement(s);

d. The matters and things stated by the person in the conversation(s) and/or statement(s);

e. Whether the conversation(s) was oral, written and/or recorded; and

f. Who has possession of the statement(s) if written and/or recorded.

13. Do you have any information:

a. That any plaintiff was, within the 10 years immediately prior to the care and treatment alleged in the complaint, confined in a hospital and/or clinic, treated by a physician and/or other health professional, or x-rayed for any reason other than personal injury? If so, state the name of each plaintiff so involved, the name and address of each such hospital and/or clinic, physician, technician and/or other health care professional, the approximate date of such confinement or service and state the reason for such confinement or service.

b. That any plaintiff has suffered any serious personal injury and/or illness within 10 years prior to the date of the occurrence? If so, state the name of each plaintiff so involved and state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered.

c. That any plaintiff has suffered any serious personal injury and/or illness since the date of the occurrence? If so, state the name of each plaintiff so involved and state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered.

d. That any other suit has been filed for any plaintiff's personal injuries? If so, state the name of each plaintiff involved, the nature of the injuries claimed, the court(s) and caption(s) in which filed, the year(s) filed, and the title(s) and docket number(s) of the suit(s).

e. That any claim for workers' compensation benefits has been filed for any plaintiff? If so, state the name and address of the employer, the date(s) of the accident(s), the identity of the insurance company that paid any such benefits and the case number(s) and jurisdiction(s) where filed.

14. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial and all other information required for each witness.

15. Identify any statements, information and/or documents known to you and requested by any of the foregoing interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each interrogatory, specify the legal basis for the claim as required by Illinois Supreme Court Rule 201(n).

16. List the name and address of all persons (other than yourself and persons heretofore listed) who have knowledge of the facts of the care and treatment complained of in the complaint filed herein and/or of the injuries claimed to have resulted therefrom.

ATTESTATION

STATE OF ILLINOIS)

) SS.

~~COUNTY OF _____)~~

~~_____, being first duly sworn on oath, deposes and states that he/she is a defendant in the above-captioned matter, that he/she has read the foregoing document, and the answers made herein are true, correct and complete to the best of his/her knowledge and belief.~~

~~_____~~
~~SIGNATURE~~
~~SUBSCRIBED and SWORN to before me this~~
~~_____ day of _____, 19___.~~

~~_____~~
~~NOTARY PUBLIC~~

Rule 214. Discovery of Documents, Objects, and Tangible Things--Inspection of Real Estate

(a) Any party may by written request direct any other party to produce for inspection, copying, reproduction photographing, testing or sampling specified documents, including electronically stored information as defined under Rule 201 (b)(4), objects or tangible things, or to permit access to real estate for the purpose of making surface or subsurface inspections or surveys or photographs, or tests or taking samples, or to disclose information calculated to lead to the discovery of the whereabouts of any of these items, whenever the nature, contents, or condition of such documents, objects, tangible things, or real estate is relevant to the subject matter of the action. The request shall specify a reasonable time, which shall not be less than 28 days except by agreement or by order of court, and the place and manner of making the inspection and performing the related acts.

(b) With regard to electronically stored information as defined in Rule 201 (b)(4), if a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(c) One copy of the request shall be served on all other parties entitled to notice. A party served with the written request shall (1) ~~produce the requested documents~~ identify all materials in the party's possession responsive to the request and copy or provide reasonable opportunity for copying or inspections. Production of documents shall be as they are kept in the usual course of business or organized and labeled to correspond with the categories in the request, ~~and all retrievable information in computer storage in printed form~~ or (2) serve upon the party so requesting written objections on the ground that the request is improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be complied with. A party may object to a request on the basis that the burden or expense of producing the requested materials would be disproportionate to the likely benefit, in light of the factors set out in Rule 201 (c)(3). Any objection to the request or the refusal to respond shall be heard by the court upon prompt notice and motion of the party submitting the request. If the party claims that the item is not in his or her possession or control or that he or she does not have information calculated to lead to the discovery of its whereabouts, the party may be ordered to submit to examination in open court or by deposition regarding such claim. The ~~party~~ producing party ~~documents~~ shall furnish an affidavit stating whether the production is complete in accordance with the request. Copies of identifications, objections and affidavits of completeness shall be served on all parties entitled to notice.

(d) A party has a duty to seasonably supplement any prior response to the extent of documents, objects or tangible things which subsequently come into that party's possession or control or become known to that party.

(e) This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon real estate.

Amended June 28, 1974, effective September 1, 1974; amended October 1, 1976, effective November 15, 1976; amended June 1, 1995, effective January 1, 1996; amended May 29, 2014, eff. July 1, 2014.

Committee Comments

(Revised May 29, 2014)

Paragraphs (a) and (b)

The Committee reorganized Rule 214 as well as creating new paragraph (b), which is modeled after Federal Rule of Civil Procedure 34(b).

Paragraph (c)

The Committee's intent was to assist in the area of electronically stored information by allowing for identification of materials.

Committee Comments

(Revised June 1, 1995)

As originally promulgated Rule 214 was patterned after former Rule 17. It provided for discovery of documents and tangible things, and for entry upon real estate, in the custody or control of any "party or other person," by moving the court for an order compelling such discovery. In 1974, the rule was amended to eliminate the requirement of a court order. Under the amended rule a party seeking production of documents or tangible things or entry on real estate in the custody or control of any other party may serve the party with a request for the production of the documents or things, or for permission to enter upon the real estate. The party receiving the request must comply with it or serve objections. If objections are served, the party seeking the discovery may serve a notice of hearing on the objections, or in case of failure to respond to the request may move the court for an order under Rule 219(a).

The request procedure may be utilized only when discovery is sought from a party to the action. Discovery of documents and tangible things in the custody or control of a person not a party may be obtained by serving him with a subpoena *duces tecum* for the taking of his deposition. The last paragraph of the rule was added to indicate that the rule is not preemptive of an independent action for discovery in the nature of a bill in equity. Such an action can be employed, then, in the occasional case in which a party seeks to inspect real estate that is in the custody or control of a person not a party to the main action.

The first paragraph has been revised to require a party producing documents to produce those documents organized in the order in which they are kept in the usual course of business, or organized and labeled to correspond with the categories in the request. This revision requires the party producing documents and that party's attorney to make a good-faith review of documents produced to ensure full compliance with the request, but not to burden the requesting party with nonresponsive documents.

The failure to organize the requested documents as required by this rule, or the production of nonresponsive documents intermingled among the requested documents, constitutes a discovery abuse subject to sanctions under Rule 219.

The first paragraph has also been amended to require a party to include in that party's production response all responsive information in computer storage in printed form. This change is intended to prevent parties producing information from computer storage on storage disks or in any other manner which tends to frustrate the party requesting discovery from being able to access the information produced.

Rule 201(b) has also been amended to include in the definition of "documents" all retrievable information in computer storage, so that there can be no question but that a producing party must search its computer storage when responding to a request to produce documents pursuant to this rule.

The last sentence of the first paragraph has also been revised to make mandatory the requirement that the party producing documents furnish an affidavit stating whether the production is complete in accordance with the request. Previously, the party producing documents was not required to furnish such an affidavit unless requested to do so.

The second paragraph is new. This paragraph parallels the similar requirement in Rule 213 that a party must seasonably supplement any prior response to the extent that documents, objects or tangible things subsequently come into that party's possession or control or become known to that party. A party who has knowledge of documents, objects or tangible things responsive to a previously served request must disclose that information to the requesting party whether or not the actual documents, objects or tangible things are in the possession of the responding party. To the extent that responsive documents, objects or tangible things are not in the responding party's possession, the compliance affidavit requires the producing party to identify the location and nature of such responsive documents, objects or tangible things. It is the intent of this rule that a party must produce all responsive documents, objects or tangible things in its possession, and fully disclose the party's knowledge of the existence and location of responsive documents, objects or tangible things not in its possession so as to enable the requesting party to obtain the responsive documents, objects or tangible things from the custodian.

Rule 215. Physical and Mental Examination of Parties and Other Persons.

(a) Notice; Motion; Order. In any action in which the physical or mental condition of a party or of a person in the party's custody or legal control is in controversy, the court, upon notice and on motion made within a reasonable time before the trial, may order such party to submit to a physical or mental examination by a licensed professional in a discipline related to the physical or mental condition which is involved. The motion shall suggest the identity of the examiner and set forth the examiner's specialty or discipline. The court may refuse to order examination by the examiner suggested but in that event shall permit the party seeking the examination to suggest others. A party or person shall not be required to travel an unreasonable distance for the examination. The order shall fix the time, place, conditions, and scope of the examination and designate the examiner. The party calling an examiner to testify at trial shall disclose the examiner as a controlled expert witness in accordance with these rules.

(b) Examiner's Fee and Compensation for Loss of Earnings. The party requesting the examination shall pay the fee of the examiner and compensation for any loss of earnings incurred or to be incurred by the party or person to be examined in complying with the order for examination, and shall advance all reasonable expenses incurred or to be incurred by the party or person in complying with the order.

(c) Examiner's Report. Within 21 days after the completion of the examination, the examiner shall prepare and ~~mail or~~ deliver to the attorneys for the party requesting the examination and the party examined ~~duplicate originals of~~ a written report of the examination, setting out the examiner's findings, results of all tests made, and the examiner's diagnosis and conclusions. The court may enforce compliance with this requirement. If the report is not delivered ~~or mailed~~ to the attorney for the party examined within the time herein specified or within any extensions or modifications thereof granted by the court, neither the examiner's report, the examiner's testimony, the examiner's findings, X-ray films, nor the results of any tests the examiner has made may be received in evidence except at the instance of the party examined or who produced the person examined. No examiner under this rule shall be considered a consultant.

(d) Impartial Medical Examiner.

(1) *Examination Before Trial.* A reasonable time in advance of the trial, the court may on its own motion or that of any party, order an impartial physical or mental examination of a party where conflicting medical testimony, reports or other documentation has been offered as proof and the party's mental or physical condition is thereby placedin issue, when in the court's discretion it appears that such an examination will materially aid in the just determination of the case. The examination shall be made by a member or members of a panel of physicians chosen for their special qualifications by the Administrative Office of the Illinois Courts.

(2) *Examination During Trial.* Should the court at any time during the trial find that compelling considerations make it advisable to have an examination and report at that time, the court may in its discretion so order.

(3) *Copies of Report.* A copy of the report of examination shall be given to the court and to the attorneys for the parties.

(4) *Testimony of Examining Physician.* Either party or the court may call the examining physician or physicians to testify. Any physician so called shall be subject to cross-examination.

(5) *Costs and Compensation of Physician.* The examination shall be made, and the physician or physicians, if called, shall testify without cost to the parties. The court shall determine the compensation of the physician or physicians.

(6) *Administration of Rule.* The Administrative Director and the Deputy Administrative Director are charged with the administration of the rule.

Amended June 1, 1995, effective January 1, 1996; amended March 28, 2002, effective July 1, 2002; amended March 28, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

(March 28, 2011)

Paragraph (d) provides that a trial court may order impartial medical examinations only where the parties have presented conflicting medical testimony, reports or other such documentation which places a party's mental or physical condition "in issue" and, in the court's discretion, it appears that the examination will materially aid in the just determination of the case. Mere allegations are insufficient to place a party's mental or physical condition "in issue."

The impartial medical examiner cannot answer the ultimate legal issues in the case; rather, the examiner can render a medical opinion which can assist in the resolution of those issues.

SEE ADMINISTRATIVE ORDER ENTERED NOVEMBER 27, 2002

Committee Comment

(March 28, 2002)

This rule is amended to conform to the changes in terminology made in Supreme Court Rule 213.

Committee Comments

(Revised June 1, 1995)

This rule is derived from former Rules 17-1 and 17-2. The language of Rule 17-1 was not changed except that the time in which the examining physician shall present his findings has been extended to 21 days in paragraph (c) of Rule 215. Under former Rule 17-1(3) that period was 20 days. Paragraph (c) of the new rule also requires that the physician present his report 14 days before trial. Former Rule 17-1(3) required the physician to present his findings not later than 10 days before trial. These changes are consistent with the committee's general policy of establishing time periods in multiples of seven days.

Former Rule 17-2 has been revised as paragraph (d) of the new rule, but the substance is not changed, except that the provision is no longer limited to personal injury cases.

This rule is intended to provide an orderly procedure for the examination of civil litigants whose physical or mental condition is in controversy. Originally, the rule concerned only physicians. The new rule recognizes that a number of professionals in other health-related disciplines are licensed to perform physical and mental examinations and therefore the designation "licensed professional" is substituted for "physician." The new language was adopted to effectuate the objectives of the rule with minimal judicial involvement. The requirement of "good cause" was therefore eliminated as grounds for seeking an examination.

Timing is the critical consideration. Examining professionals under the rule fall within the classification of opinion witnesses under Supreme Court Rule 213(g) as opposed to consultants under Supreme Court Rule 201(b)(3). Consequently, the rule has been amended to require that the examination be scheduled in order that the report contemplated by subsection (c) is provided in accordance with the deadlines imposed by Supreme Court Rule 218(c). In addition, the failure to provide the attorney for the party who was examined with a copy of the examiner's report within the 21-day period specified by paragraph (c) will result in exclusion of the examiner's testimony, opinions, and the results of any tests or X-rays that were performed.

Supreme Court Rule 215 is the compilation of rules previously and independently suggested by the Illinois Judicial Conference Committee on Discovery Procedures and the Supreme Court Rules Committee. The new rule allows for physical and mental examinations of "licensed professionals" and not merely physicians. The contemplated circumstances include sociologists, psychologists or other licensed professionals in juvenile, domestic relations and child custody cases. The Committee feels that this will aid not only in the previously designated cases but in other circumstances where it may become necessary for such a "professional" to be utilized. In particular, smaller counties have had difficulty in finding psychiatrists because of their limited number and lack of availability. This rule should help to alleviate this problem. The requirement of "good cause" for seeking such an examination was eliminated from the rule. In addition, the reference to the Illinois State Medical Society has been stricken, and the Administrative Office of the Illinois Courts has been

substituted in its place.

Rule 216. Admission of Fact or of Genuineness of Documents

(a) Request for Admission of Fact. A party may serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request. A copy of the request for admission shall be served on all parties entitled to notice.

(b) Request for Admission of Genuineness of Document. A party may serve on any other party a written request for admission of the genuineness of any relevant documents described in the request. Copies of the documents shall be served with the request unless copies have already been furnished.

(c) Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission. If good faith requires that a party deny only a part, or requires qualification, of a matter of which an admission is requested, the party shall specify so much of it as is true and deny only the remainder. Any objection to a request or to an answer shall be heard by the court upon prompt notice and motion of the party making the request. The response to the request, sworn statement of denial, or written objection, shall be served on all parties entitled to notice.

(d) Public Records. If any public records are to be used as evidence, the party intending to use them may prepare a copy of them insofar as they are to be used, and may seasonably present the copy to the adverse party by notice in writing, and the copy shall thereupon be admissible in evidence as admitted facts in the case if otherwise admissible, except insofar as its inaccuracy is pointed out under oath by the adverse party in an affidavit filed and served within 28 days after service of the notice.

(e) Effect of Admission. Any admission made by a party pursuant to request under this rule is for the purpose of the pending action and any action commenced pursuant to the authority of section 13-217 of the Code of Civil Procedure (735 ILCS 5/13-217) only. It does not constitute an admission by him for any other purpose and may not be used against him in any other proceeding.

(f) Number of Requests. The maximum number of requests for admission a party may serve on another party is 30, unless a higher number is agreed to by the parties or ordered by the court for good cause shown. If a request has subparts, each subpart counts as a separate request.

(g) Special Requirements. A party must: (1) prepare a separate document which contains only the requests and the documents required for genuine document requests; (2) serve this document separate from other documents; and (3) put the following warning in a prominent place on the first page in 12-point or larger boldface type: **"WARNING: If you fail to serve the response required by Rule 216 within 28 days after you are served with this document, all the facts set forth in the requests will be deemed true and all the documents described in the requests will be deemed genuine."**

Amended July 1, 1985, effective August 1, 1985; amended May 30, 2008, effective immediately; amended October 1, 2010, effective January 1, 2011; amended Jan. 4, 2013, eff. immediately; amended Mar. 15, 2013, eff. May 1, 2013; amended May 29, 2014, eff. July 1, 2014.

Committee Comment
(October 1, 2010)

Paragraphs (f) and (g) are designed to address certain problems with Rule 216, including the service of hundreds of requests for admission. For the vast majority of cases, the limitation to 30 requests now found in paragraph (f) will eliminate this abusive

practice. Other noted problems include the bundling of discovery requests to form a single document into which the requests to admit were intermingled. This practice worked to the disadvantage of certain litigants, particularly pro se litigants, who do not understand that failure to respond within the time allowed results in the requests being deemed admitted. Paragraph (g) provides for requests to be contained in a separate paper containing a boldface warning regarding the effect of the failure to respond within 28 days. Consistent with Vision Point of Sale Inc. v. Haas, 226 Ill.2d 334 (2007), trial courts are vested with discretion with respect to requests for admission.

Committee Comments
(Revised July 1, 1985)

This rule is derived from former Rule 18. Despite the usefulness of requests for admission of facts in narrowing issues, such requests seem to have been used very little in Illinois practice. The committee was of the opinion that perhaps this has resulted in part from the fact that they are provided for in the text of a rule that reads as if it relates primarily to admission of the genuineness of documents. Accordingly, it has rewritten the rule to place the authorization for request for admission of facts in a separate paragraph. No change in the substance of former Rule 18 was intended.

Subparagraph (e) was amended in 1985 to resolve an apparent conflict about whether admissions are carried over into subsequent cases between the same parties, involving the same subject matter, as are the fruits of other discovery activities (see Rule 212(d)). Relief from prior admissions is available to the same extent in the subsequent action as in the case which was dismissed or remanded.

Rule 217. Depositions for the Purpose of Perpetuating Testimony

(a) Before Action.

(1) *Petition.* A person who desires to perpetuate his own testimony or that of another person regarding any matter that is or may be cognizable in any court or proceeding may file a verified petition in the court of the county in which the action or proceeding might be brought or had or in which one or more of the persons to be examined reside. The petition shall be entitled in the name of the petitioner as petitioner and against all other expected parties or interested persons, including unknown owners, as respondents and shall show: (i) the facts which he desires to establish by the proposed testimony and his reasons for de siring to perpetuate it, (ii) the names or a description of the persons interested or whom he expects will be adverse parties and their addresses so far as known, and (iii) the names and addresses of the persons to be examined, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition for the purpose of perpetuating their testimony.

(2) *Notice and Service.* The petitioner shall serve upon each person named or described in the petition as respondent a copy of the petition, together with a notice stating that the petitioner will apply to the court, at a time and place designated in the notice, for the order described in the petition. Unless a shorter period is fixed by the court, the notice shall be served either within or without the State at least 21 days before the date of hearing, in the manner provided for service of summons. If service cannot with due diligence be made upon any respondent named or described in the petition, the court may by order provide for service by publication or otherwise. For persons not personally served and not otherwise represented, the court shall appoint an attorney who shall represent them and cross-examine the deponent. If any respondent is a minor or a person under legal disability or not yet in being, a guardian *ad litem* shall be appointed to represent his interests. The fees and costs of a court-appointed attorney or guardian *ad litem* shall be borne by the petitioner.

(3) *Order and Examination.* If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken, specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written questions, and fixing the time, place, and conditions of the examination.

(b) Pending Appeal. If an appeal has been taken from the judgment of a trial court, or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may on motion and for good cause shown allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in that court.

Amended May 28, 1982, effective July 1, 1982.

Committee Comments

This rule is derived from former Rule 21. The language is substantially unchanged except that, in keeping with the committee's general policy, subparagraph (a)(2) requires notice to be given at least 21 days before the date of the hearing, as opposed to 20

days under former Rule 21(1)(b), and that subparagraph (a)(2) adds the requirement that petitioner pay the expenses of a court-appointed attorney or guardian *ad litem*.

Rule 218. Pretrial Procedure.

(a) Initial Case Management Conference. Except as provided by local circuit court rule, which on petition of the chief judge of the circuit has been approved by the Supreme Court, the court shall hold a case management conference within 35 days after the parties are at issue and in no event more than 182 days following the filing of the complaint. At the conference counsel familiar with the case and authorized to act shall appear and the following shall be considered:

(1) the nature, issues, and complexity of the case;

(2) the simplification of the issues;

(3) amendments to the pleadings;

(4) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(5) limitations on discovery including:

(i) the number and duration of depositions which may be taken;

(ii) the area of expertise and the number of expert witnesses who may be called; and

(iii) deadlines for the disclosure of witnesses and the completion of written discovery and depositions;

(6) the possibility of settlement and scheduling of a settlement conference;

(7) the advisability of alternative dispute resolution;

(8) the date on which the case should be ready for trial;

(9) the advisability of holding subsequent case management conferences; and

(10) any other matters which may aid in the disposition of the action <u>including but not limited to issues involving electronically stored information and preservation</u>.

(b) Subsequent Case Management Conferences. At the initial and any subsequent case management conference, the court shall set a date for a subsequent management conference or a trial date.

(c) Order. At the case management conference, the court shall make an order which recites any action taken by the court, the agreements made by the parties as to any of the matters considered, and which specifies as the issues for trial those not disposed of at the conference. The order controls the subsequent course of the action unless modified. All dates set for the disclosure of witnesses, including rebuttal witnesses, and the completion of discovery shall be chosen to ensure that discovery will be completed not later than 60 days before the date on which the trial court reasonably anticipates that trial will commence, unless otherwise agreed by the parties. This rule is to be liberally construed to do substantial justice between and among the parties.

(d) Calendar. The court shall establish a pretrial calendar on which actions shall be placed for consideration, as above provided, either by the court on its own motion or on the motion of any party.

Amended June 1, 1995, effective January 1, 1996; amended May 31, 2002, effective July 1, 2002; amended October 4, 2002, effective immediately; <u>amended May 29, 2014, eff. July 1, 2014</u>.

<u>Committee Comment</u>

<u>(Revised May 29, 2014)</u>

<u>Paragraph (a)</u>

<u>Paragraph (a), subparagraph (10) is intended to encourage parties to use the case management conference to resolve issues concerning electronically stored information early in the case.</u>

Committee Comment
(October 4, 2002)

The rule is amended to clarify that case management orders will set dates for disclosure of rebuttal witnesses, if any, and that parties may agree to waive or modify the 60-day rule without altering the trial date.

Committee Comment
(May 31, 2002)

This rule is amended to conform to the changes in terminology made in Supreme Court Rule 213.

Committee Comments
(Revised June 1, 1995)

This rule is former Rule 22.

Rule 218 has been substantially modified to implement the objective of early and ongoing differential case management. The former rule contemplated a single pretrial conference which could be held at the discretion of the court. The new rule mandates an initial case management conference which must be held within 35 days after the parties are at issue or in any event not later than 182 days after the complaint is filed. The principal goal of the initial case management conference is to tailor the future course of the litigation to reflect the singular characteristics of the case.

The new rule recognizes that each case is a composite of variable factors including the nature, number and complexity of the substantive and procedural issues which are involved, the number of parties and potential witnesses as well as the type and economic value of the relief sought. Less complex cases with limited damages and fewer parties require less discovery and involve less time to prepare than do cases with multiple complex issues involving numerous parties and damages or other remedies of extraordinary economic consequence. By focusing upon each case within six months after it is filed, the court and the parties are able to formulate a case management plan which avoids both the potential abuses and injustices that are inherent in the previous "cookie cutter" approach.

At the initial case management conference the court and counsel will consider the specific matters which are enumerated in subparagraphs (a)(1) through (a)(10). Chief among these are those which require early recognition of the complexity of the claim in order to regulate the type of discovery which will follow and the amount of time which the court and counsel believe will be required before the case can be tried. In less complex cases, subparagraphs (a)(5)(i) and (a)(5)(ii) contemplate limitations on the number and duration of depositions and restriction upon the type and number of opinion witnesses which each side may employ. This type of management eliminates discovery abuse in smaller cases without inflexibly inhibiting the type of preparation which is required in more complex litigation.

The new rule also recognizes a number of the uncertainties and problems which existed under the prior scheduling provision of former Rule 220. It attempts to eliminate those difficulties by requiring the court, at the initial management conference, to set deadlines for the disclosure of opinion witnesses as well as for the completion of written discovery and depositions. Amendments to Supreme Court Rules 213 and 214 impose a continuing obligation to supplement discovery responses, including the identification of witnesses who will testify at trial and the subject matter of their testimony. Consequently, the trial of cases should not be delayed by the late identification of witnesses, including opinion witnesses, or by virtue of surprise because the nature of their testimony and opinions is unknown. In this regard, paragraph (c) provides that deadlines established by the court must take into account the completion of discovery not later than 60 days before it is anticipated that trial will commence. For example, opinion witnesses should be disclosed, and their opinions set forth pursuant to interrogatory answer, at such time or times as will permit their depositions to be taken more than 60 days before trial.

Paragraph (a) also enumerates the other matters which the court and counsel are to consider, including the elimination of nonmeritorious issues and defenses and the potential for settlement or alternative dispute resolution. Except in instances where the case is sufficiently simple to permit trial to proceed without further management, the rule contemplates that subsequent case management conferences will be held. The Committee believes that useless or unnecessary depositions should not take place during the discovery process and that no deposition should be longer than three hours unless good cause is shown. Circuits which adopt a local circuit court rule should accomplish the purpose and goals of this proposal. Any local circuit court rule first must be approved by the Supreme Court.

Paragraph (b) reflects the belief that case management is an ongoing process in which the court and counsel will periodically review the matters specified in subparagraphs (a)(1) through (a)(10). As additional parties are added, or amendments are made to the complaint or defenses, it may be necessary to increase or further limit the type of discovery which is required. Consequently, paragraph (c) provides that at the conclusion of each case management conference, the court shall enter an order

which reflects the action which was taken. That order will control the course of litigation unless and until it is modified by a subsequent case management order. A separate road map will chart the course of each case from a point within six months from the date on which the complaint is filed until it is tried. By regulating discovery on a case-specific basis, the trial court will keep control of the litigation and thereby prevent the potential for discovery abuse and delay which might otherwise result.

Paragraph (c) controls the subsequent course of action of the litigation unless modified and should ensure that the disclosure of opinion witnesses and discovery will be completed no later than 60 days before the date on which the matter is set for trial.

Rule 219. Consequences of Refusal to Comply with Rules or Order Relating to Discovery or Pretrial Conferences

(a) Refusal to Answer or Comply with Request for Production. If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on notice to all persons affected thereby, the proponent of the question may move the court for an order compelling an answer. If a party or other deponent refuses to answer any written question upon the taking of his or her deposition or if a party fails to answer any interrogatory served upon him or her, or to comply with a request for the production of documents or tangible things or inspection of real property, the proponent of the question or interrogatory or the party serving the request may on like notice move for an order compelling an answer or compliance with the request. If the court finds that the refusal or failure was without substantial justification, the court shall require the offending party or deponent, or the party whose attorney advised the conduct complained of, or either of them, to pay to the aggrieved party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and the court finds that the motion was made without substantial justification, the court shall require the moving party to pay to the refusing party the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.

(b) Expenses on Refusal to Admit. If a party, after being served with a request to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter of fact, the requesting party may apply to the court for an order requiring the other party to pay the requesting party the reasonable expenses incurred in making the proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made.

(c) Failure to Comply with Order or Rules. If a party, or any person at the instance of or in collusion with a party, unreasonably fails to comply with any provision of part E of article II of the rules of this court (Discovery, Requests for Admission, and Pretrial Procedure) or fails to comply with any order entered under these rules, the court, on motion, may enter, in addition to remedies elsewhere specifically provided, such orders as are just, including, among others, the following:

(i) That further proceedings be stayed until the order or rule is complied with;

(ii) That the offending party be debarred from filing any other pleading relating to any issue to which the refusal or failure relates;

(iii) That the offending party be debarred from maintaining any particular claim, counterclaim, third-party complaint, or defense relating to that issue;

(iv) That a witness be barred from testifying concerning that issue;

(v) That, as to claims or defenses asserted in any pleading to which that issue is material, a judgment by default be entered against the offending party or that the offending party's action be dismissed with or without prejudice;

(vi) That any portion of the offending party's pleadings relating to that issue be stricken and, if thereby made appropriate, judgment be entered as to that issue; or

(vii) That in cases where a money judgment is entered against a party subject to sanctions under this subparagraph, order the offending party to pay interest at the rate provided by law for judgments for any period of pretrial delay attributable to the offending party's conduct.

In lieu of or in addition to the foregoing, the court, upon motion or upon its own initiative, may impose upon the offending party or his or her attorney, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred as a result of the misconduct, including a reasonable attorney fee, and when the misconduct is wilful, a monetary penalty. When appropriate, the court may, by contempt proceedings, compel obedience by any party or person to any subpoena issued or order entered under these rules. Notwithstanding the entry of a judgment or an order of dismissal, whether voluntary or involuntary, the trial court shall retain jurisdiction to enforce, on its own motion or on the

motion of any party, any order imposing monetary sanctions, including such orders as may be entered on motions which were pending hereunder prior to the filing of a notice or motion seeking a judgment or order of dismissal.

Where a sanction is imposed under this paragraph (c), the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order.

(d) Abuse of Discovery Procedures. The court may order that information obtained through abuse of discovery procedures be suppressed. If a party wilfully obtains or attempts to obtain information by an improper discovery method, wilfully obtains or attempts to obtain information to which that party is not entitled, or otherwise abuses these discovery rules, the court may enter any order provided for in paragraph (c) of this rule.

(e) Voluntary Dismissals and Prior Litigation. A party shall not be permitted to avoid compliance with discovery deadlines, orders or applicable rules by voluntarily dismissing a lawsuit. In establishing discovery deadlines and ruling on permissible discovery and testimony, the court shall consider discovery undertaken (or the absence of same), any misconduct, and orders entered in prior litigation involving a party. The court may, in addition to the assessment of costs, require the party voluntarily dismissing a claim to pay an opposing party or parties reasonable expenses incurred in defending the action including but not limited to discovery expenses, expert witness fees, reproduction costs, travel expenses, postage, and phone charges.

Amended effective September 1, 1974; amended May 28, 1982, effective July 1,1982; amended July 1, 1985, effective August 1, 1985; amended June 1, 1995, effective January 1, 1996; amended March 28, 2002, effective July 1, 2002.

Committee Comment

(Revised May 29, 2014)

The Committee believes that the rule is sufficient to cover sanction issues as they relate to electronic discovery. The rulings in *Shimanovsky v. GMC*, 181 Ill. 2d 112 (1998) and *Adams v. Bath and Body Works*, 358 Ill.App.3d 387 (1st Dist. 2005) contain detailed discussion of sanctions for discovery violations for the loss or destruction of relevant evidence and for the separate and distinct claim for the tort of negligent spoliation of evidence.

Administrative Order
In re Discovery Rules

The order entered March 28, 2002, amending various rules and effective July 1, 2002, shall apply to all cases filed after such effective date as well as all cases pending on such effective date, provided that any discovery order entered in any such case prior to July 1, 2002, shall remain in effect unless and until amended by the trial court.

Order entered November 27, 2002, effective immediately.

Committee Comment
(March 28, 2002)

This rule is amended to conform to the changes in terminology made in Supreme Court Rule 213.

Committee Comments
(Revised June 1, 1995)

Paragraphs (a) and (b)

Paragraphs (a) and (b) of this rule were derived from former Rules 19--12(1) and (2). In 1974, Rule 214 was amended to provide for a request procedure in the production of documents and tangible things and inspection of real estate, eliminating the requirement that the party seeking such discovery obtain an order of court. Paragraph (a) of Rule 219 was amended at the same time to extend its coverage to cases in which a party refuses to comply with a request under amended Rule 214.

Paragraph (c)

Paragraph (c) is derived from former Rule 19--12(3). The paragraph has been changed to permit the court to render a default judgment against either party. This is consistent with Federal Rule 37(b)(iii), and makes effective the remedy against a balky plaintiff. The remedy was previously limited to dismissal (although it is to be noted that in former Rule 19--12(3) nonsuit and

dismissal were both mentioned), and the plaintiff could presumably bring his action again, while in case of the defendant the answer could be stricken and the case decided on the complaint alone. The sanctions imposed must relate to the issue to which the misconduct relates and may not extend to other issues in the case.

Subparagraph (c) was amended in 1985 to make it clear that the sanctions provided for therein applied to violations of new Rules 220 and 222, as well as any discovery rules that may be enacted in the future. Subparagraph (c) was further amended in 1985 to recognize the trial court's continuing jurisdiction to enforce any monetary sanctions imposed thereunder for any abuse of discovery in any case in which an order prescribing such sanctions was entered before any judgment or order of dismissal, whether voluntary or involuntary (see *North Park Bus Service, Inc. v. Pastor* (1976), 39 Ill. App. 3d 406), or to order such monetary sanctions, and enforce them, in any case in which a motion for sanctions was pending before the trial court prior to the filing of a notice or motion seeking a judgment or order of dismissal, whether voluntary or involuntary. This change in no way compromises a plaintiff's right to voluntarily dismiss his action under section 2--1009 of the Code of Civil Procedure (Ill. Rev. Stat. 1983, ch. 110, par. 2--1009). It simply makes it clear that a party may not avoid the consequences of an abuse of the discovery process by filing a notice of voluntary dismissal.

Paragraph (c) has been expanded to provide: (1) for the imposition of prejudgment interest in those situations where a party who has failed to comply with discovery has delayed the entering of a money judgment; (2) the imposition of a monetary penalty against a party or that party's attorney for a wilful violation of the discovery rules; and (3) for other appropriate sanctions against a party or that party's attorney including the payment of reasonable expenses incurred as a result of the misconduct together with a reasonable attorney fee.

Paragraph (c) is expanded first by adding subparagraph (vii), which specifically allows the trial court to include in a judgment, interest for any period of pretrial delay attributable to discovery abuses by the party against whom the money judgment is entered.

Paragraph (c) has also been expanded to provide for the imposition of a monetary penalty against a party or that party's attorney as a result of a wilful violation of the discovery rules. See *Safeway Insurance Co. v. Graham*, 188 Ill. App. 3d 608 (1st Dist. 1989). The decision as to whom such a penalty may be payable is left to the discretion of the trial court based on the discovery violation involved and the consequences of that violation. This language is intended to put to rest any doubt that a trial court has the authority to impose a monetary penalty against a party or that party's attorney. See *Transamerica Insurance Group v. Lee*, 164 Ill. App. 3d 945 (1st Dist. 1988) (McMorrow, J., dissenting).

The last full paragraph of paragraph (c) has also been amended to give greater discretion to the trial court to fashion an appropriate sanction against a party who has violated the discovery rules or orders. The amended language parallels that used in Rule 137. This paragraph has also been amended to require a judge who imposes a sanction under paragraph (c) to specify the reasons and basis for the sanction imposed either in the judgment order itself or in a separate written order. This language is the same as that now contained in Rule 137.

Paragraph (d)

Paragraph (d) is new. It extends the sanctions provided for in the new rule to general abuse of the discovery rules.

Paragraph (e)

Paragraph (e) addresses the use of voluntary dismissals to avoid compliance with discovery rules or deadlines, or to avoid the consequences of discovery failures, or orders barring witnesses or evidence. This paragraph does not change existing law regarding the right of a party to seek or obtain a voluntary dismissal. However, this paragraph does clearly dictate that when a case is refiled, the court shall consider the prior litigation in determining what discovery will be permitted, and what witnesses and evidence may be barred. The consequences of noncompliance with discovery deadlines, rules or orders cannot be eliminated by taking a voluntary dismissal. Paragraph (e) further authorizes the court to require the party taking the dismissal to pay the out-of-pocket expenses actually incurred by the adverse party or parties. This rule reverses the holdings in *In re Air Crash Disaster at Sioux City, Iowa, on July 19, 1989*, 259 Ill. App. 3d 231, 631 N.E.2d 1302 (1st Dist. 1994), and *Galowich v. Beech Aircraft Corp.*, 209 Ill. App. 3d 128, 568 N.E.2d 46 (1st Dist. 1991). Paragraph (e) does not provide for the payment of attorney fees when an action is voluntarily dismissed.

Rules 220-221. Reserved

Rule 222. Limited and Simplified Discovery in Certain Cases

(a) Applicability. This rule applies to all cases subject to mandatory arbitration, civil actions seeking money damages not in excess of $50,000 exclusive of interest and costs, and to cases for the collection of taxes not in excess of $50,000. This rule does not apply to small claims, ordinance violations, actions brought pursuant to 750 ILCS (FAMILIES), and actions seeking equitable relief. Except as otherwise specifically provided by this rule, the general rules governing discovery procedures remain applicable to cases governed by this rule.

(b) Affidavit re Damages Sought. Any civil action seeking money damages shall have attached to the initial pleading the party's affidavit that the total of money damages sought does or does not exceed $50,000. If the damages sought do not exceed $50,000, this rule shall apply. Any judgment on such claim which exceeds $50,000 shall be reduced posttrial to an amount not in excess of $50,000. Any such affidavit may be amended or superseded prior to trial pursuant to leave of court for good cause shown, and only if it is clear that no party will suffer any prejudice as a result of such amendment. Any affidavit filed pursuant hereto shall not be admissible in evidence at trial.

(c) Time for Disclosure; Continuing Duty. The parties shall make the initial disclosure required by this rule as fully as then possible in accordance with the time lines set by local rule, provided however that if no local rule has been established pursuant to Rule 89 then within 120 days after the filing of a responsive pleading to the complaint, counter-complaint, third-party complaint, etc., unless the parties otherwise agree, or for good cause shown, if the court shortens or extends the time. Upon service of a disclosure, a notice of disclosure shall be promptly filed with the court. The duty to provide disclosures as delineated in this rule and its subsections shall be a continuing duty, and each party shall seasonably supplement or amend disclosures whenever new or different information or documents become known to the disclosing party.
All disclosures shall include information and data in the possession, custody and control of the parties as well as that which can be ascertained, learned or acquired by reasonable inquiry and investigation.

(d) Prompt Disclosure of Information. Within the times set forth in section (c) above, each party shall disclose in writing to every other party:

(1) The factual basis of the claim or defense. In the event of multiple claims or defenses, the factual basis for each claim or defense.

(2) The legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities.

(3) The names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call at trial with a designation of the subject matter about which each witness might be called to testify.

(4) The names, addresses, and telephone numbers of all persons whom the party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to the action, and the nature of the knowledge or information each such individual is believed to possess.

(5) The names, addresses, and telephone numbers of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements.

(6) The identity and address of each person whom the disclosing party expects to call as an expert witness at trial, plus the information called for by Rule 213(f).

(7) A computation and the measure of damages alleged by the disclosing party and the document or testimony on which such computation and measure are based and the names, addresses, and telephone numbers of all damage witnesses.
(8) The existence, location, custodian, and general description of any tangible evidence or documents that the disclosing party plans to use at trial and relevant insurance agreements.

(9) A list of the documents or, in the case of voluminous documentary information, a list of the categories of documents, known by a party to exist whether or not in the party's possession, custody or control and which that party believes may be relevant to the subject matter of the action, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the dates(s) upon which those documents will be made, or have been made, available for inspection and copying. Unless good cause is stated for not doing so, a copy of each document listed shall be served with the disclosure. If production is not made, the name and address of the custodian of the document shall be indicated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

(e) Affidavit re Disclosure. Each disclosure shall be made in writing, accompanied by the affidavit of an attorney or a party

which affirmatively states that the disclosure is complete and correct as of the date of the disclosure and that all reasonable attempts to comply with the provisions of this rule have been made.

(f) Limited and Simplified Discovery Procedures. Except as may be ordered by the trial court, upon motion and for good cause shown, the following limited and simplified discovery procedures shall apply:

(1) Each party may propound to any other party a total of 30 interrogatories and supplemental interrogatories in the aggregate, including subsections. Interrogatories may require the disclosure of facts upon which a party bases a claim or defense, the enumeration, with proper identification, of all persons having knowledge of relevant facts, and the identification of trial witnesses and trial exhibits.

(2) *Discovery Depositions.* No discovery deposition shall exceed three hours, absent agreement among the parties. Except as otherwise ordered by court, the only individuals whose discovery depositions may be taken are the following:

(a) *Parties.* The discovery depositions of parties may be taken. With regard to corporations, partnerships, voluntary associations, or any other groups or entities, one representative deponent may be deposed.

(b) *Treating Physicians and Expert Witnesses.* Treating physicians and expert witnesses may be deposed, but only if they have been identified as witnesses who will testify at trial. The provisions of Rule 204(c) do not apply to treating physicians who are deposed under this Rule 222. The party at whose instance the deposition is taken shall pay a reasonable fee to the deponent, unless the deponent was retained by a party to testify at trial or unless otherwise ordered by the court.

(3) *Evidence Depositions.* No evidence depositions shall be taken except pursuant to leave of court for good cause shown. Leave of court shall not be granted unless it is shown that a witness is expected to testify on matters material to the issues and it is unlikely that the witness will be available for trial, or other exceptional circumstances exist. Motions requesting the taking of evidence depositions shall be supported by affidavit. Evidence depositions shall be taken to secure trial testimony, not as a substitute for discovery depositions.

(4) Requests pursuant to Rules 214~~,~~ and 215 ~~and 216~~ are permitted, as are notices pursuant to Rule 237.

(5) Requests pursuant to Rule 216 are permitted except that no request may be filed less than 60 days prior to the scheduled trial date or, if within said 60 days, only by order of court.

(g) Exclusion of Undisclosed Evidence. In addition to any other sanction the court may impose, the court shall exclude at trial any evidence offered by a party that was not timely disclosed as required by this rule, except by leave of court for good cause shown.

(h) Claims of Privilege. When information or documents are withheld from disclosure or discovery on a claim that they are privileged pursuant to a common law or statutory privilege, any such claim shall be made expressly and shall be supported by a description of the nature of the documents, communications or things not produced or disclosed and the exact privilege which is being claimed.

(i) Affidavits Wrongly Filed. The court shall enter an appropriate order pursuant to Rule 219(c) against any party or his or her attorney, or both, as a result of any affidavit filed pursuant to (b) or (e) above which the court finds was (a) false; (b) filed in bad faith; or (c) was without reasonable factual support.

(j) Applicability Pursuant to Local Rule. This rule may be made applicable to additional categories of cases pursuant to local rules enacted in any judicial circuit.

Adopted June 1, 1995, effective January 1, 1996; amended March 28, 2002, effective July 1, 2002; amended February 10, 2006, effective July 1, 2006; amended October 1, 2010, effective January 1, 2011.

Committee Comment
(October 1, 2010)

Subparagraph (f)(5) has been added to provide a time frame for the issuance in anticipation of a trial date.

Rule 223. Reserved

Rule 224. Discovery Before Suit to Identify Responsible Persons and Entities

(a) Procedure.

(1) *Petition.*

(i) A person or entity who wishes to engage in discovery for the sole purpose of ascertaining the identity of one who may be responsible in damages may file an independent action for such discovery.

(ii) The action for discovery shall be initiated by the filing of a verified petition in the circuit court of the county in which the action or proceeding might be brought or in which one or more of the persons or entities from whom discovery is sought resides. The petition shall be brought in the name of the petitioner and shall name as respondents the persons or entities from whom discovery is sought and shall set forth: (A) the reason the proposed discovery is necessary and (B) the nature of the discovery sought and shall ask for an order authorizing the petitioner to obtain such discovery. The order allowing the petition will limit discovery to the identification of responsible persons and entities and where a deposition is sought will specify the name and address of each person to be examined, if known, or, if unknown, information sufficient to identify each person and the time and place of the deposition.

(2) *Summons and Service.* The petitioner shall serve upon the respondent or respondents a copy of the petition together with a summons that is prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix. ~~in a form substantially as follows:~~

~~In the Circuit Court of the _____ Judicial Circuit~~

~~_____ County, Illinois (Or, In the Circuit Court of Cook County, Illinois)~~

~~A.B., C.D. *et al.*~~
~~(naming all petitioners),~~
~~Petitioners,~~

~~v.~~

~~No._____~~

~~H.J., K.L. *et al.*~~
~~(naming all respondents),~~
~~Respondents.~~

~~SUMMONS FOR DISCOVERY~~

~~TO EACH RESPONDENT:~~

~~You are hereby notified that on _____ ____, 20__, a petition, a copy of which is attached, was filed in the above court seeking an order of discovery. Pursuant to law a hearing will be held to determine whether such an order shall be entered in this case. If you wish to contest the entry of such order, you must appear at this hearing at _____, at _____ o'clock ___M., on _____, _____ ___, 20__.~~

_____

_____

~~Clerk of the Circuit Court~~

~~Unless a shorter period is fixed by the court, the summons shall be served at least 14 days before the date of hearing, in the manner provided for service of summons in other civil cases. If service cannot with due diligence be made upon the respondent(s), the court may by order provide for service by publication or otherwise.~~

(b) Expiration and Sanctions. Unless extended for good cause, the order automatically expires 60 days after issuance. The sanctions available under Supreme Court Rule 219 may be utilized by a party initiating an action for discovery under this rule or by a respondent who is the subject of discovery under this rule.

(c) Expenses of Complying. The reasonable expenses of complying with the requirements of the Order of Discovery shall be borne by the person or entity seeking the discovery.

Adopted June 19, 1989, effective August 1, 1989; amended May 30, 2008, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

(August 1, 1989)

New Rule 224 was adopted effective August 1, 1989. This rule provides a tool by which a person or entity may, with leave of court, compel limited discovery before filing a lawsuit in an effort to determine the identity of one who may be liable in damages. The rule is not intended to modify in any way any other rights secured or responsibilities imposed by law. It provides a mechanism for plaintiffs to ascertain the identity of potential defendants in a variety of civil cases, including Structural Work Act, products liability, malpractice and negligence claims. The rule will be of particular benefit in industrial accident cases where the parties responsible may be known to the plaintiff's employer, which may immunize itself from suit. The rule facilitates the identification of potential defendants through discovery depositions or through any of the other discovery tools set forth in Rules 201 through 214. The order allowing the petition will limit discovery to the identification of responsible persons and entities. Therefore, Supreme Court Rule 215, dealing with mental and physical exams, and Supreme Court Rule 216, dealing with requests to admit, are not included as means of discovery under this rule.

Rules 225-230. Reserved

PART F. TRIALS

Rule 231. Motions for Continuance

(a) Absence of Material Evidence. If either party applies for a continuance of a cause on account of the absence of material evidence, the motion shall be supported by the affidavit of the party so applying or his authorized agent. The affidavit shall show (1) that due diligence has been used to obtain the evidence, or the want of time to obtain it; (2) of what particular fact or facts the evidence consists; (3) if the evidence consists of the testimony of a witness his place of residence, or if his place of residence is not known, that due diligence has been used to ascertain it; and (4) that if further time is given the evidence can be procured.

(b) When Continuance Will Be Denied. If the court is satisfied that the evidence would not be material, or if the other party will admit the affidavit in evidence as proof only of what the absent witness would testify to if present, the continuance shall be denied unless the court, for the furtherance of justice, shall consider a continuance necessary.

(c) Other Causes for Continuance. It is sufficient cause for the continuance of any action: (1) that, in time of war or insurrection, a party whose presence is necessary for the full and fair prosecution or defense of the action is in the military service of the United States or of this State and that his military service materially impairs his ability to prosecute or defend the action; or (2) that the party applying therefor or his attorney is a member of either house of the General Assembly during the time the General Assembly is in session, if the presence of that party is necessary for the full and fair trial of the action, and in

the case of the attorney, if the attorney was retained by the party prior to the time the cause was set for trial.

(d) Amendment as Cause. No amendment is cause for continuance unless the party affected thereby, or his agent or attorney, shall make affidavit that, in consequence thereof, he is unprepared to proceed to or with the trial. If the cause thereof is the want of material evidence, a continuance shall be granted only on a further showing as may be required for continuance for that cause.

(e) Court's Own Motion. The court may on its own motion, or with the consent of the adverse party, continue a cause for trial to a later day.

(f) Time for Motion. No motion for the continuance of a cause made after the cause has been reached for trial shall be heard, unless a sufficient excuse is shown for the delay.

(g) Taxing of Costs. When a continuance is granted upon payment of costs, the costs may be taxed summarily by the court, and on being taxed shall be paid on demand of the party, his agent, or his attorney, and, if not so paid, on affidavit of the fact, the continuance may be vacated, or the court may enforce the payment, with the accruing costs, by contempt proceedings.

Amended October 21, 1969, effective January 1, 1970.

Committee Comments
(Revised October 1969)

This rule, as adopted effective January 1, 1967, was former Rule 14 without change in substance.

Paragraph (c) of the rule was amended in 1969 to conform with the 1967 amendment of section 59 of the Civil Practice Act. 1967 Ill. Laws 326.

Rule 232. Trial of Equitable and Legal Matters

(a) Trial of a Single Equitable Cause of Action. When matters are treated as a single equitable cause of action as provided in Rule 135(a), they shall be heard and determined in the manner heretofore practiced in courts of equity. When legal and equitable matters that may be asserted separately are pleaded as provided in Rule 135, the court shall first determine whether the matters joined are properly severable, and, if so, whether they shall be tried together or separately and in what order.

(b) Trial of Joined Equitable and Legal Matters. If the court determines that the matters are severable, the issues formed on the law counts shall be tried before a jury when a jury has been properly demanded, or by the court when a jury has not been properly demanded. The equitable issues shall be heard and decided in the manner heretofore practiced in courts of equity.

Committee Comments

This is a revision of the trial provisions of former Rules 10 and 11, without change in substance. The pleading provision appears as Rule 135.

Rule 233. Parties' Order of Proceeding

The parties shall proceed at all stages of the trial, including the selection of prospective jurors as specified in Rule 234, opening and closing statements, the offering of evidence, and the examination of witnesses, in the order in which they appear in the pleadings unless otherwise agreed by all parties or ordered by the court. In consolidated cases, third-party proceedings, and all other cases not otherwise provided for, the court shall designate the order.

Amended effective July 1, 1975.

Committee Comments
(Revised July 1, 1975)

This is Rule 6.2 of the Uniform Rules for the Circuit Courts of Illinois.

The phrase "as specified in Rule 234" was added in 1975 to reflect changes in the procedure for conduct of the *voir dire* examination of prospective jurors, effected at the same time by amendments to Rule 234.

Rule 234. Voir Dire Examination of Jurors and Cautionary Instructions

The court shall conduct the *voir dire* examination of prospective jurors by putting to them questions it thinks appropriate touching upon their qualifications to serve as jurors in the case on trial. The court may permit the parties to submit additional questions to it for further inquiry if it thinks they are appropriate, and shall permit the parties to supplement the examination by such direct inquiry as the court deems proper for a reasonable period of time depending upon the length of examination by the court, the complexity of the case, and the nature and extent of the damages. Questions shall not directly or indirectly concern matters of law or instructions. The court shall acquaint prospective jurors with the general duties and responsibilities of jurors.

Amended effective July 1, 1975; amended August 9, 1983, effective October 1, 1983; amended April 3, 1997, effective May 1, 1997.

Committee Comments
(Revised July 1, 1975)

Rule 234 was amended in 1975 to emphasize the duty of the judge to manage the *voir dire* examination. Under the rule as amended the judge must put to the prospective jurors such questions as he thinks necessary and then may either permit the attorneys or the parties to supplement the examination by putting questions directly to the prospective jurors or may require them to submit the questions to him, in which event he will put such of the questions submitted as he thinks proper.

Rule 235. Opening Statements

As soon as the jury is impaneled the attorney for the plaintiff may make an opening statement. The attorney for the defendant may immediately follow with an opening statement. An opening statement may not be made at any other time, except in the discretion of the trial court.

Committee Comments

This is a revision of Rule 6.4 of the Uniform Rules for the Circuit Courts of Illinois.

Rule 236. Admission of Business Records in Evidence

(a) Any writing or record, whether in the form of any entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of the act, transaction, occurrence, or event, if made in the regular course of any business, and if it was the regular course of the business to make such a memorandum or record at the time of such an act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but shall not affect its admissibility. The term "business," as used in this rule, includes business, profession, occupation, and calling of every kind.

(b) Although police accident reports may otherwise be admissible in evidence under the law, subsection (a) of this rule does not allow such writings to be admitted as a record or memorandum made in the regular course of business.

Amended August 9, 1983, effective October 1, 1983; amended April 1, 1992, effective August 1, 1992.

Committee Comments

Paragraph (a)

Paragraph (a) of this rule is a revision without change in substance of subsection 1732(a) of title 28 of the United States Code, generally known as the Federal Business Records Act. This act reflects the modern approach to the admissibility of business records as evidence.

As early as the 1600's the common law had developed as an exception to the hearsay rule the practice of admitting shopbooks in evidence, whether kept by the party himself or a clerk, and whether the entrant was living or dead. The custom was abused, however, and was restricted by statute in 1609. Colonial practice in this country adopted the limitations on the exception, and these historical boundaries have continued to restrict the admission of business records in many States until modern times. (5 Wigmore, Evidence 346, 347-61 (3d ed. 1940).) "The gross result," Professor Wigmore declares, "is a mass of technicalities which serve no useful purpose in getting at the truth." 5 Wigmore, Evidence 346, 361 (3d ed. 1940).

In 1927 the Commonwealth Fund of New York appointed a committee of experts to restate the law in the form of a single rule, broad and flexible enough to correspond to contemporary business practices, while safeguarding fundamental requirements. The result was a model act similar in substance to paragraph (a) of Rule 236. In 1936 the National Conference of Commissioners on Uniform State Laws approved a recommended uniform act on business records, which revised the 1927 rule. On the basis of this revised proposal, Congress adopted subsection 1732(a) of title 28 of the United States Code on June 20, 1936.

In Illinois, the trend has been similar. In *People v. Small*, 319 Ill. 437, 477, 150 N.E. 435 (1926), the Supreme Court held bank records admissible on the basis of a foundation laid by the officers in charge of the records, stating, "The business of this great commercial country is transacted on records kept in the usual course of business and vouched for by the supervising officer, and such evidence ought to be competent in a court of justice. Modern authority sustains this view."

The municipal court of Chicago adopted the principles of the rule prepared by the Commonwealth Fund of New York as Municipal Court Rule 70. Later the municipal court modified the rule by following the language of 28 U.S.C. §1732(a). In *Secco v. Chicago Transit Authority*, 6 Ill. App. 2d 266, 269-70, 127 N.E.2d 266 (1955), Rule 70 was held valid, with the following comments (6 Ill. App. 2d 266, 269-70):

"Rule 70's general purpose is to liberalize the rules of evidence pertaining to regular business entries. (*Bell v. Bankers Life & Casualty Co.*, 327 Ill. App. 321 (1945).) Abandoned are the anachronisms of an older day whose influence is felt even today in many of those jurisdictions which have legislatively adopted Rule 70. It was intended to make unnecessary the original entrants' production at the trial because of their numbers or anonymity, or for reasons which made their production impracticable. It was also intended to make unnecessary the production of the original entrant although he alone and without the aid of others made the entries. The routine character of a business is reflected in its records accumulating instance upon instance of some particular transaction or event, and because of this it was felt that the original entrant would have no present recollection of the various details lost within the mass of recorded entries. *** It was intended to be sufficient, if the custodian of the records or some person familiar with the business and its mode of operation, would testify at the trial as to the manner in which the record was prepared, the objective being that the principle of an absent witness' unavailability should not be applied with identical logical narrowness of an earlier day, and to bring it nearer to standards accepted in reasonable action outside the courts. 5 Wigmore on Evidence (3d ed. 1940) p. 391."

The language of paragraph (a) of Rule 236 is that of the Federal statute and Chicago municipal court rule with only minor language changes. The committee believes that it is desirable to retain this often-interpreted language without substantial change in the interest of having established judicial construction to work with.

A portion of the Federal statute (28 U.S.C. §1732(b)) is a provision permitting the retention of microfilm records in lieu of the originals, which is a desirable complement to the Business Records Act. However, it is not included in Rule 236 because this subject is already covered by the Evidence Act (Ill. Rev. Stat. 1965, ch. 51, par. 3).

Paragraph (b)

Paragraph (b) of Rule 236 provides that the law governing admissibility of police accident reports is not affected by this rule. The rule was amended in 1992 to allow medical records to be treated as any other business record under paragraph (a).

Rule 237. Compelling Appearances of Witnesses at Trial

(a) Service of Subpoenas. Any witness shall respond to any lawful subpoena of which he or she has actual knowledge, if payment of the fee and mileage has been tendered. Service of a subpoena by mail may be proved *prima facie* by a return receipt showing delivery to the witness or his or her authorized agent by certified or registered mail at least seven days before the date on which appearance is required and an affidavit showing that the mailing was prepaid and was addressed to the witness, restricted delivery, with a check or money order for the fee and mileage enclosed.

(b) Notice of Parties *et al.* at Trial or Other Evidentiary Hearings. The appearance at the trial or other evidentiary hearing of a party or a person who at the time of trial or other evidentiary hearing is an officer, director, or employee of a party may be required by serving the party with a notice designating the person who is required to appear. The notice also may require the production at the trial or other evidentiary hearing of the originals of those documents or tangible things previously produced during discovery. If the party or person is a nonresident of the county, the court may order any terms and conditions in connection with his or her appearance at the trial or other evidentiary hearing that are just, including payment of his or her reasonable expenses. Upon a failure to comply with the notice, the court may enter any order that is just, including any ~~order~~ sanction or remedy provided for in Rule 219(c) that may be appropriate.

(c) Notice of Parties at Expedited Hearings in Domestic Relations Cases. In a domestic relations case, the appearance at an

expedited hearing of a party who has been served with process or appeared may be required by serving the party with a notice designating the party who is required to appear. The notice may also require the production at the hearing of the original documents or tangible things relevant to the issues to be addressed at the hearing. If the party is a nonresident of the county, the court may order any terms and conditions in connection with his or her appearance at the hearing that are just, including payment of his or her reasonable expenses. Upon a failure to comply with the notice, the court may enter any order that is just, including any sanction or remedy provided for in Rule 219(c) that may be appropriate.

Amended June 19, 1968, and amended October 21, 1969, effective January 1, 1970; amended September 29, 1978, effective November 1, 1978; amended June 1, 1995; effective January 1, 1996; amended February 1, 2005, effective July 1, 2005.

Committee Comments
(February 1, 2005)

Paragraph (c) was added to the rule effective July 1, 2005. Because of the important issues decided in expedited hearings in domestic relations cases, including temporary family support, temporary child custody, and temporary restraining orders, a trial court should have the benefit of the attendance of individuals and production of documents and tangible things on an expedited basis.

Committee Comments
(Revised June 1, 1995)

This rule conforms substantially with Rule 204(a), which deals with compelling the appearance of witnesses for depositions.

Rule 237 contains no counterpart to Rule 204(a)(1), because the authority for the issuance of subpoenas is provided by section 62 of the Civil Practice Act (Ill. Rev. Stat. 1977, ch. 110, par. 62).

Paragraph (a) of Rule 237 was added to the rule in 1969. It is identical with Rule 204(a)(2) except for the substitution of "witness" for "deponent." Together with Rule 204 it was amended in 1978 to conform its requirements to presently available postal delivery service. See the committee comments to Rule 105.

Paragraph (a) formerly provided that proof of service of a subpoena by mail may be proved by a return receipt and an affidavit of mailing. In the new rule, such proof is described as "*prima facie*" to make it clear that such proof may be rebutted. This effects no substantive change.

Paragraph (b) of this rule, except for the last sentence, which was added by amendment in 1968, was Rule 237 as adopted effective January 1, 1967. Comparable provisions applicable to depositions had been in effect since January 1, 1956, but prior to the adoption of Rule 237 it was necessary to serve a subpoena to assure the attendance of the opposing party at the trial. There was obviously no reason for such a distinction.

Paragraph (b) has been revised to clarify the fact that Rule 237(b) is not a discovery option to be used on the eve of trial in lieu of a timely request for the production of documents, objects and tangible things pursuant to Rule 214. Discovery of relevant documents, objects and tangible things should be diligently pursued before trial pursuant to Rule 214. Under the new paragraph, a Rule 237(b) request to produce at trial will be expressly limited to those documents, objects and tangible things produced during discovery. This revision will effect a change in current practice, under which a Rule 237(b) request to produce at trial is often utilized as a major discovery tool by nondiligent litigants, a practice that often causes trial delay. It is the intent of this revision to establish that due diligence for the purposes of a motion to delay the trial cannot be shown by a party who first attempts to discover documents, objects or tangible things by serving a request under Rule 237(b). See *Campen v. Executive House Hotel, Inc.*, 105 Ill. App. 3d 576, 434 N.E.2d 511 (1st Dist. 1982).

Rule 238. Impeachment of Witnesses; Hostile Witnesses

(a) The credibility of a witness may be attacked by any party, including the party calling the witness.

(b) If the court determines that a witness is hostile or unwilling, the witness may be examined by the party calling the witness as if under cross-examination.

Amended February 19, 1982, effective April 1, 1982; amended April 11, 2001, effective immediately.

Rule 239. Instructions

(a) Use of IPI Instruction; Requirements of Other Instructions. Whenever Illinois Pattern Jury Instructions (IPI), Civil, contains an instruction applicable in a civil case, giving due consideration to the facts and the prevailing law, and the court determines that the jury should be instructed on the subject, the IPI instruction shall be used, unless the court determines that it does not accurately state

the law. The most current version of the IPI Civil instructions is maintained on the Supreme Court website. Whenever IPI does not contain an instruction on a subject on which the court determines that the jury should be instructed, the instruction given in that subject should be simple, brief, impartial, and free from argument.

(b) Court's Instructions. At any time before or during the trial, the court may direct counsel to prepare designated instructions. Counsel shall comply with the direction, and copies of instructions so prepared shall be marked "Court's Instruction." Counsel may object at the conference on instructions to any instruction prepared at the court's direction, regardless of who prepared it, and the court shall rule on these objections as well as objections to other instructions. The grounds of the objections shall be particularly specified.

(c) Procedure. Each instruction shall be accompanied by a copy, and a copy shall be delivered to opposing counsel. In addition to numbering the copies and indicating who tendered them, as required by section 2-1107 of the Code of Civil Procedure, the copy shall contain a notation substantially as follows:

"IPI No. _____" or "IPI No. _____ Modified" or "Not in IPI"

as the case may be. All objections made at the conference and the rulings thereon shall be shown in the report of proceedings. The original instructions given by the court to the jury shall be taken by the jury to the jury room.

(d) Instructions Before Opening Statements. After the jury is selected and before opening statements, the court may orally instruct the jury as follows:

(i) On cautionary or preliminary matters, including, but not limited to, the burden of proof, the believability of witnesses, and the receipt of evidence for a limited purpose.

(ii) On the substantive law applicable to the case, including, but not limited to, the elements of the claim or affirmative defense.

(e) Instructions After the Close of Evidence. After the close of evidence, the court shall repeat any applicable instructions given to the jury before opening statements and instruct the jury on procedural issues and the substantive law applicable to the case, including, but not limited to, the elements of the claim or affirmative defense. The court may, in its discretion, read the instructions to the jury prior to closing argument. Whether or not the instructions are read prior to closing argument, the court shall read the instructions to the jury following closing argument and may, in its discretion, distribute a written copy of the instructions to each juror. Jurors shall not be given a written copy of the jury instructions prior to counsel concluding closing argument.

(f) Instructions During Trial. Nothing in this rule is intended to restrict the court's authority to give any appropriate instruction during the course of the trial.

Amended May 28, 1982, effective July 1, 1982; amended October 1, 1998, effective January 1, 1999; amended June 11, 2009, effective September 1, 2009; amended December 16, 2010, effective January 1, 2011; amended Apr. 8, 2013, eff. immediately.

Committee Comments

This is former Rule 25--1 without change in substance.

Rule 240. Directed Verdicts

The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

Committee Comments

This new rule, taken from Rule 50(a) of the Federal Rules of Civil Procedure, as amended in 1963, eliminates an archaic and futile ceremony. See Kaplan, *Amendments of the Federal Rules of Civil Procedure, 1961-63 (II*), 77 Harv. L. Rev. 801, 823 (1964).

Rule 241. Use of Video Conference Technology in Civil Cases

The court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location.

Adopted October 4, 2011, effective immediately.

Committee Comments

The presentation of live testimony in court remains of utmost importance. As such, showings of good cause and compelling circumstances are likely to arise when a witness is unable to attend trial for unexpected reasons, such as accident or illness, but is able to testify from a remote location. Advance notice should be given to all parties of foreseeable circumstances that may lead the proponent to offer testimony by contemporaneous transmission.

Good cause and compelling circumstances may be established if all parties agree that testimony should be presented by contemporaneous transmission; however, the court is not bound by a stipulation and can insist on live testimony.

Adequate safeguards are necessary to ensure accurate identification of the witness and protect against influences by persons present with the witness. Accurate transmission must also be assured.

242. Reserved

243. Written Juror Questions Directed to Witnesses

(a) Questions Permitted. The court may permit jurors in civil cases to submit to the court written questions directed to witnesses.

(b) Procedure. Following the conclusion of questioning by counsel, the court shall determine whether the jury will be afforded the opportunity to question the witness. Regarding each witness for whom the court determines questions by jurors are appropriate, the jury shall be asked to submit any question they have for the witness in writing. No discussion regarding the questions shall be allowed between jurors at this time; neither shall jurors be limited to posing a single question nor shall jurors be required to submit questions. The bailiff will then collect any questions and present the questions to the judge. Questions will be marked as exhibits and made a part of the record.

(c) Objections. Out of the presence of the jury, the judge will read the question to all counsel, allow counsel to see the written question, and give counsel an opportunity to object to the question. If any objections are made, the court will rule upon them at that time and the question will be either admitted, modified, or excluded accordingly. The limitations on direct examination set forth in Rule 213(g) apply to juror-submitted questions.

(d) Questioning of the Witness. The court shall instruct the witness to answer only the question presented, and not exceed the scope of the question. The court will ask each question; the court will then provide all counsel with an opportunity to ask follow-up questions limited to the scope of the new testimony.

(e) Admonishment to Jurors. At times before or during the trial that it deems appropriate, the court shall advise the jurors that they shall not concern themselves with the reason for the exclusion or modification of any question submitted and that such measures are taken by the court in accordance with the rules of evidence that govern the case.

Adopted April 3, 2012, eff. July 1, 2012; amended May 29, 2014, eff. July 1, 2014.

Committee Comments
(April 3, 2012)

This rule gives the trial judge discretion in civil cases to permit jurors to submit written questions to be directed to witnesses—a procedure which has been used in other jurisdictions to improve juror comprehension, attention to the proceedings, and satisfaction with jury service. The trial judge may discuss with the parties' attorneys whether the procedure will be helpful in the case, but the decision whether to use the procedure rests entirely with the trial judge. The rule specifies some of the procedures the trial judge must follow, but it leaves other details to the trial judge's discretion.

244-270. Reserved

PART G. ENTRY OF ORDERS AND JUDGMENTS

Rule 271. Orders on Motions

When the court rules upon a motion other than in the course of trial, the attorney for the prevailing party shall prepare and present to the court the order or judgment to be entered, unless the court directs otherwise. Orders and judgments may be prepared, presented, and signed electronically, if permitted by the Supreme Court.

Amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

This is a revision of Rule 7.1 of the Uniform Rules for the Circuit Courts of Illinois.

Rule 272. When Judgment is Entered

If at the time of announcing final judgment the judge requires the submission of a form of written judgment to be signed by the judge or if a circuit court rule requires the prevailing party to submit a draft order, the clerk shall make a notation to that effect and the judgment becomes final only when the signed judgment is filed. If no such signed written judgment is to be filed, the judge or clerk shall forthwith make a notation of judgment and enter the judgment of record promptly, and the judgment is entered at the time it is entered of record. Orders and judgments may be prepared, presented, and signed electronically, if permitted by the Supreme Court.

Amended October 25, 1990, effective November 1, 1990; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Rule 273. Effect of Involuntary Dismissal

Unless the order of dismissal or a statute of this State otherwise specifies, an involuntary dismissal of an action, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join an indispensable party, operates as an adjudication upon the merits.

Committee Comments

This rule is based upon Rule 41(b) of the Federal Rules of Civil Procedure and sets to rest the question of the effect of an involuntary dismissal other than those excepted by the rule. *Cf. Lurie v. Rupe*, 51 Ill. App. 2d 164, 176, 201 N.E.2d 158 (1st Dist. 1964).

Rule 274. Multiple Final Orders and Postjudgment Motion

A party may make only one postjudgment motion directed at a judgment order that is otherwise final. If a final judgment order is modified pursuant to a postjudgment motion, or if a different final judgment or order is subsequently entered, any party affected by the order may make one postjudgment motion directed at the superseding judgment or order. Until disposed, each timely postjudgment motion shall toll the finality and appealability of the judgment or order at which it is directed. The pendency of a Rule 137 claim does not affect the time in which postjudgment motions directed at final underlying judgments or orders must be filed, but may toll the appealability of the judgment under Rule 303(a)(1). A postjudgment motion directed at a final order on a Rule 137 claim is also subject to this rule.

Adopted October 14, 2005.

Committee Comments
(January 1, 2006)

New Rule 274 clarifies the status of successive (superseding) final judgments, and of postjudgment motions directed at each final judgment, allowing one such motion per party per final judgment. Rule 274 further clarifies that a timely postjudgment motion directed at any final judgment, including a later superseding judgment, tolls the appeal time. See Rule 303. Rule 274 codifies *Gibson v. Belvidere National Bank & Trust Co.,* 326 Ill. App. 3d 45 (2002), *appeal denied,* 198 Ill.2d 614 (2002) (table). Rule 274 also clarifies that Rule 137 proceedings do not affect the postjudgment motion procedures on the underlying substantive judgments in the case.

Rule 275. Reserved

PART H. POST-JUDGMENT PROCEEDINGS

Rule 276. Opening of Judgment by Confession

A motion to open a judgment by confession shall be supported by affidavit in the manner provided by Rule 191 for summary judgments, and shall be accompanied by a verified answer which defendant proposes to file. If the motion and affidavit disclose a *prima facie* defense on the merits to the whole or a part of the plaintiff's claim, the court shall set the motion for hearing. The plaintiff may file counteraffidavits. If, at the hearing upon the motion, it appears that the defendant has a defense on the merits to the whole or a part of the plaintiff's claim and that he has been diligent in presenting his motion to open the judgment, the court shall sustain the motion either as to the whole of the judgment or as to any part thereof as to which a good defense has been shown, and the case shall thereafter proceed to trial upon the complaint, answer, and any further pleadings which are required or permitted. If an order is entered opening the judgment, defendant may assert any counterclaim, and plaintiff may amend his complaint so as to assert any other claims, including claims which have accrued subsequent to the entry of the original judgment. The issues of the case shall be tried by the court without a jury unless the defendant or the plaintiff demands a jury and pays the proper fee (if one is required by law) to the clerk at the time of the entry of the order opening the judgment. The original judgment stands as security, and all further proceedings thereon are stayed until the further order of the court, but if the defense is to a part only of the original judgment, the judgment stands as to the balance and enforcement may be had thereon. If a defendant files a motion supported by affidavit which does not disclose a defense to the merits but discloses a counterclaim against the plaintiff, and defendant has been diligent in presenting his motion, the trial court may permit the filing of the counterclaim and, to the extent justice requires, may stay proceedings on the judgment by confession until the counterclaim is disposed of.

Amended May 28, 1982, effective July 1, 1982.

Committee Comments

This is former Rule 23 with the language of the last sentence changed to clarify the right of the trial court to stay or refuse to stay proceedings in whole or in part until the counterclaim is disposed of.

Rule 277. Supplementary Proceeding

(a) When Proceeding May be Commenced and Against Whom; Subsequent Proceeding Against Same Party. A supplementary proceeding authorized by section 2-1402 of the Code of Civil Procedure may be commenced at any time with respect to a judgment which is subject to enforcement. The proceeding may be against the judgment debtor or any third party the judgment creditor believes has property of or is indebted to the judgment debtor. If there has been a prior supplementary proceeding with respect to the same judgment against the party, whether he is the judgment debtor or a third party, no further proceeding shall be commenced against him except by leave of court. The leave may be granted upon *ex parte* motion of the judgment creditor, but only upon a finding of the court, based upon affidavit of the judgment creditor or some other person, having personal knowledge of the facts, (1) that there is reason to believe the party against whom the proceeding is sought to be commenced has property or income the creditor is entitled to reach, or, if a third party, is indebted to the judgment debtor, (2) that the existence of the property, income or indebtedness was not known to the judgment creditor during the pendency of any prior supplementary proceeding, and (3) that the additional supplementary proceeding is sought in good faith to discover assets and not to harass the judgment debtor or third party.

(b) How Commenced. The supplementary proceeding shall be commenced by the service of a citation on the party against whom it is brought. The clerk shall issue a citation upon oral request. In cases in which an order of court is prerequisite to the commencement of the proceeding, a copy of the order shall be served with the citation.

(c) Citation—Form, Contents, and Service. The citation by which a supplementary proceeding is commenced:

(1) shall be captioned in the cause in which the judgment was entered;

(2) shall state the date the judgment was entered or revived, and the amount thereof remaining unsatisfied;

(3) shall require the party to whom it is directed, or if directed to a corporation or partnership, a designated officer or partner thereof, to appear for examination at a time (not less than 5 days from the date of service of the citation) and place to be specified therein, concerning the property or income of or indebtedness due the judgment debtor; and

(4) may require, upon reasonable specification thereof, the production at the examination of any books, ~~papers~~ documents, or records in his or its possession or control which have or may contain information concerning the property or income of the debtor.

The citation shall be served and returned in the manner provided by rule for service, otherwise than by publication, of a notice of additional relief upon a party in default.

(d) When Proceeding May Be Commenced. A supplementary proceeding against the judgment debtor may be commenced in the court in which the judgment was entered. A supplementary proceeding against a third party must, and against the judgment debtor may, be commenced in a county of this State in which the party against whom it is brought resides, or, if an individual, is employed or

transacts business in person, upon the filing of a transcript of the judgment in the court in that county. If the party to be cited neither resides nor is employed nor transacts his business in person in this State, the proceeding may be commenced in any county in the State, upon the filing of a transcript of the judgment in the court in the county in which the proceeding is to be commenced.

(e) Hearing. The examination of the judgment debtor, third party or other witnesses shall be before the court, or, if the court so orders, before an officer authorized to administer oaths designated by the court, unless the judgment creditor elects, by so indicating in the citation or subpoena served or by requesting the court to so order, to conduct all or a part of the hearing by deposition as provided by the rules of this court for discovery depositions. The court at any time may terminate the deposition or order that proceedings be conducted before the court or officer designated by the court, and otherwise control and direct the proceeding to the end that the rights and interests of all parties and persons involved may be protected and harassment avoided. Any interested party may subpoena witnesses and adduce evidence as upon the trial of any civil action. Upon the request of either party or the direction of the court, the officer before whom the proceeding is conducted shall certify to the court any evidence taken or other proceedings had before him.

(f) When Proceeding Terminated. A proceeding under this rule continues until terminated by motion of the judgment creditor, order of the court, or satisfaction of the judgment, but terminates automatically 6 months from the date of (1) the respondent's first personal appearance pursuant to the citation or (2) the respondent's first personal appearance pursuant to subsequent process issued to enforce the citation, whichever is sooner. The court may, however, grant extensions beyond the 6 months, as justice may require. Orders for the payment of money continue in effect notwithstanding the termination of the proceedings until the judgment is satisfied or the court orders otherwise.

(g) Concurrent and Consecutive Proceedings. Supplementary proceedings against the debtor and third parties may be conducted concurrently or consecutively. The termination of one proceeding does not affect other pending proceedings not concluded.

(h) Sanctions. Any person who fails to obey a citation, subpoena, or order or other direction of the court issued pursuant to any provision of this rule may be punished for contempt. Any person who refuses to obey any order to deliver up or convey or assign any personal property or in an appropriate case its proceeds or value or title to lands, or choses in action, or evidences of debt may be committed until he has complied with the order or is discharged by due course of law. The court may also enforce its order against the real and personal property of that person.

(i) Costs. The court may tax as costs a sum for witness', stenographer's, and officer's fees, and the fees and outlays of the sheriff, and direct the payment thereof out of any money which may come into the hands of the sheriff or the judgment creditor as a result of the proceeding. If no property applicable to the payment of the judgment is discovered in the course of the proceeding, the court may tax as costs a sum for witness', stenographer's, and officer's fees incurred by any person subpoenaed, to be paid to him by the person who subpoenaed him, and unless paid within the time fixed, enforcement may be had in the manner provided by law for the collection of a judgment for the payment of money.

Amended October 1, 1976, effective November 15, 1976; amended September 29, 1978, effective November 1, 1978; amended May 28, 1982, effective July 1, 1982; amended Jan. 4, 2013, eff. immediately.

Committee Comments
(Revised September 29, 1978)

This is former Rule 24 without change in substance, except for changing 30 days to 28 days in paragraph (f), in accordance with the policy of establishing time periods in multiples of seven. The last sentence has been added to paragraph (f) to make it clear that an order for the payment of money entered in the proceeding is not automatically vacated at the end of the six months' period.

In 1978, Rule 277 was amended to delete the words "or decree." This change effected no change in substance. See Rule 2(b)(2).

Rules 278-280. Reserved

PART I. SMALL CLAIMS

Rule 281. Definition of Small Claim

For the purpose of the application of Rules 281 through 288, a small claim is a civil action based on either tort or contract for money not in excess of ~~$5,000~~ $10,000, exclusive of interest and costs, or for the collection of taxes not in excess of that amount.

The order entered December 6, 2005, amending Rule 281 and effective January 1, 2006, shall apply only to cases filed after such effective date.

Amended effective December 15, 1966; amended May 27, 1969, effective July 1, 1969; amended January 5, 1981, effective February 1, 1981; amended December 3, 1996, effective January 1, 1997; amended December 6, 2005, effective January 1, 2006.

Committee Comments
~~(Revised January 5, 1981)~~
(Revised December 6, 2005)

This rule was based on paragraph A of former Rule 9–1 which was in effect from January 1, 1964, to January 1, 1967. The only changes of substance made by the 1967 revision were increasing the upper limit of a small claim from $200 to $500, including tax-collection cases in the definition, and adding the phrase "based on either tort or contract." The limit was further increased to $1,000 by the 1969 amendment, and to $2,500 by amendment in 1981.

Rule 281 was amended in 2005 to increase the jurisdictional limit from $5,000 to $10,000. As the change will require a modification to the allocation of judicial resources, the change was made applicable only to new cases and does not apply to pending cases.

Rule 282. Commencement of Action--Representation of Corporations

(a) Commencement of Actions. An action on a small claim may be commenced by paying to the clerk of the court the required filing fee and filing a short and simple complaint setting forth (1) plaintiff's name, residence address, e-mail address (required for attorneys only), and telephone number, (2) defendant's name and place of residence, or place of business or regular employment, and (3) the nature and amount of the plaintiff's claim, giving dates and other relevant information. If the claim is based upon a written instrument, a copy thereof or of so much of it as is relevant must be copied in or attached to the original and all copies of the complaint, unless the plaintiff attaches to the complaint an affidavit stating facts showing that the instrument is unavailable to him.

(b) Representation of Corporations. No corporation may appear as claimant, assignee, subrogee or counterclaimant in a small claims proceeding, unless represented by counsel. When the amount claimed does not exceed the jurisdictional limit for small claims, a corporation may defend as defendant any small claims proceeding in any court of this State through any officer, director, manager, department manager or supervisor of the corporation, as though such corporation were appearing in its proper person. For the purposes of this rule, the term "officer" means the president, vice-president, registered agent or other person vested with the responsibility of managing the affairs of the corporation.

Amended June 12, 1987, effective August 1, 1987; amended May 20, 1997, effective July 1, 1997; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Rule 283. Form of Summons

Summons in small claims shall require each defendant to appear on a day specified in the summons not less than 14 or more than 40 days after issuance of the summons (see Rule 181(b)) and shall be in the form provided for in Rule 101(b) in actions for money not in excess of $50,000.

Amended effective August 3, 1970; amended December 3, 1996, effective immediately.

Committee Comments

This is derived from paragraph C of former Rule 9--1, effective January 1, 1964. The earliest return day is increased from 7 to 14. See also the comments to Rules 101(b) and 286, which deal with the right of the court to control the return day, manner of appearance, and related matters.

Rule 284. Service by Certified or Registered Mail

Unless otherwise provided by circuit court rule, at the request of the plaintiff and in lieu of personal service, service in small claims may be made within the state as follows:

(a) For each defendant to be served the plaintiff shall pay to the clerk of the court a fee of $2, plus the

cost of mailing, and file ~~furnish to the clerk an original and one copy of~~ a summons containing an affidavit setting forth the defendant's last known mailing address.~~, and a copy of the complaint in addition to the original. The original summons shall be retained by the clerk.~~

(b) The clerk forthwith shall mail to the defendant, at the address appearing in the affidavit, the copy of the summons and complaint, certified or registered mail, return receipt requested, showing to whom delivered and the date and address of delivery. United States Postal Service electronic return receipt may be utilized in lieu of paper receipts. The summons and complaint shall be mailed on a "restricted delivery" basis when service is directed to a natural person. The envelope and return receipt shall bear the return address of the clerk, and the return receipt shall include ~~be stamped with~~ the docket number of the case. The receipt for certified or registered mail shall state the name and address of the addressee, and the date of mailing, and shall be filed by the clerk.~~ attached to the original summons.~~

(c) The return receipt, when returned to the clerk, shall be filed by the clerk. ~~attached to the original summons, and, if it~~ If the receipt shows delivery at least 3 days before the day for appearance, the receipt shall constitute proof of service.

(d) The clerk shall note the fact of service in a permanent record.

Amended October 1, 1976, effective November 15, 1976; amended September 29, 1978, effective November 1, 1978; amended February 15, 1979, effective March 1, 1979; amended July 1, 1985, effective August 1, 1985; amended November 21, 1988, effective January 1, 1989; amended April 11, 2001, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

(Revised July 1, 1985)

This is paragraphs D(1), (2), (3), and (4) of former Rule 9-1, effective January 1, 1964. Paragraph (b) was amended in 1978 to require mailing by certified or registered mail, "restricted delivery, return receipt requested, showing to whom, date and address of delivery." Prior to 1978, this subparagraph required that process be mailed "certified mail, return receipt requested." In this respect it differed from Rules 105, 204, and 237, which required mailing "addressee only." In 1978, this class of delivery having been discontinued by the Postal Service, Rules 105, 204, and 237 were amended to require mailing "restricted delivery, return receipt requested, showing to whom, date and address of delivery," the most restricted delivery provided for in current postal regulations. At the same time Rule 284(b) was amended to require the same class delivery, thus making the requirement uniform. See Committee Comment to Rule 105.

The amendment effective August 1, 1985, changed the fee for mailing from $3 to $2 plus the cost of mailing. This amendment insulates the rule from further change by making the "cost of mailing" an element of the fee charged by the clerk.

Rule 285. Jury Demands

A small claim shall be tried by the court unless a jury demand is filed by the plaintiff at the time the action is commenced or by the defendant not later than the date he is required to appear. There shall be 6 jurors unless either party demands 12. A party demanding a jury shall pay a fee of $12.50 unless he demands a jury of 12, in which case he shall pay a fee of $25, or, if another party has previously paid a fee for a jury of 6, $12.50.

Committee Comments

This is paragraph E of former Rule 9--1, effective January 1, 1964, without change.

Rule 286. Appearance and Trial

(a) Unless the "Notice to Defendant" (see Rule 101(b)) provides otherwise, the defendant in a small claim must appear at the

time and place specified in the summons and the case shall be tried on the day set for appearance unless otherwise ordered. If the defendant appears, he need not file an answer unless ordered to do so by the court; and when no answer is ordered the allegations of the complaint will be considered denied and any defense may be proved as if it were specifically pleaded.

(b) Informal Hearings in Small Claims Cases. In any small claims case, the court may, on its own motion or on motion of any party, adjudicate the dispute at an informal hearing. At the informal hearing all relevant evidence shall be admissible and the court may relax the rules of procedure and the rules of evidence. The court may call any person present at the hearing to testify and may conduct or participate in direct and cross-examination of any witness or party. At the conclusion of the hearing the court shall render judgment and explain the reasons therefor to all parties.

Amended June 12, 1987, effective August 1, 1987; amended April 1, 1992, effective August 1, 1992.

Committee Comments

This is paragraph F of former Rule 9--1, effective January 1, 1964, with a caveat that the trial court may by "Notice to Defendant" on the summons mentioned in Rule 101(b) adopt the procedure best suited to local conditions in the handling of small claims. By the notice of the summons, the defendant should be given explicit directions where to appear, whether he must appear ready for trial on the day for appearance, or whether by filing a written appearance or giving appropriate notice to the plaintiff he will be excused from going to trial at that time. If by entry of a written appearance or by personal appearance of the defendant the case is automatically set over for trial on a specified later date, the notice to defendant should so state. These suggestions are only illustrative. See also the Committee Comments to Rule 101(b).

Paragraph (b) was added effective August 1, 1987. The rule authorizes the court on its own motion or on motion of any party to conduct an informal hearing to decide small claims cases where the amount claimed by any party does not exceed $1,000. Amended in 1992 to delete the condition setting an upper limit on the value of cases in which an informal hearing may be had.

Rule 287. Depositions, Discovery and Motions

(a) No depositions shall be taken or interrogatories or other discovery proceeding or requests to admit be used prior to trial in small claims except by leave of court.

(b) Motions. Except as provided in sections 2--619 and 2--1001 of the Code of Civil Procedure, no motion shall be filed in small claims cases, without prior leave of court.

Amended June 12, 1987, effective August 1, 1987; amended April 1, 1992, effective August 1, 1992.

Committee Comments

Paragraph (a) is substantially paragraph G of former Rule 9--1, effective January 1, 1964. The restriction on discovery proceedings obviously does not apply to interrogatories in garnishment or to supplementary proceedings under Rule 277. Amended in 1992 to provide that a request to admit under Rule 216 is not to be used in small claims cases, except upon leave of court.

Paragraph (b) was added in August of 1987. The basic purposes of the Supreme Court Rules applicable to small claims cases are to simplify procedures and reduce the cost of litigation. In keeping with these objectives, motions in such cases should only be permitted to the extent that the motion may be dispositive of the claim and to the extent that the trial judge, in his discretion, may allow in the interests of justice.

Rule 288. Installment Payment of Judgments

The court may order that the amount of a small claim judgment shall be paid to the prevailing party on a certain date or in specified installments, and may stay the enforcement of the judgment and other supplementary process during compliance with such order. The stay may be modified or vacated by the court, but the installment payments of small claims judgments shall not extend over a period in excess of three years' duration.

Amended effective January 21, 1969; amended May 28, 1982, effective July 1, 1982.

Committee Comments
(Revised October 1969)

As adopted effective January 1, 1967, this rule was paragraph H of former Rule 9--1, effective January 1, 1964, without change.

The provision in the last sentence that installment payments shall not extend over a period of more than three years was added by amendment January 21, 1969, in view of the provision in the Supreme Court recordkeeping order that small claims files are to be destroyed three years after the date of judgment, unless otherwise ordered by the trial court.

Rule 289. Service of Process in Proceedings to Confirm a Judgment by Confession or to Collect a Judgment for ~~$5,000~~ $10,000 or Less

In proceedings to confirm a judgment by confession or to collect a judgment for money, in which the judgment is for ~~$5,000~~ $10,000 or less, exclusive of interest and costs, process may be served in the manner provided in Rule 284.

Adopted January 5, 1981, effective February 1, 1981; amended December 3, 1996, effective January 1, 1997; amended March 8, 2007, effective April 1, 2007.

Committee Comments
(Revised March 8, 2007)

Rule 289 was added in 1981 to permit service by mail in proceedings to confirm a judgment by confession and in proceedings to collect a judgment, *e.g.*, wage deductions and garnishment, when the amount of the judgment is $2,500 or less, the figure used to define a small claim in Rule 281.

In 2007 the rule was amended to reflect the increased jurisdictional limit from $5,000 to $10,000 for small-claims actions under Rule 281.

Rule 290. Reserved

PART J. MISCELLANEOUS

Rule 291. Proceedings Under the Administrative Review Law

(a) Form of Summons. The summons in proceedings under the Administrative Review Law shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.~~drawn in substantially the following form:~~

~~In the Circuit Court of the _____ Judicial Circuit~~
~~_____ County, Illinois~~
~~(Or, In the Circuit Court of Cook County, Illinois)~~

~~A.B., C.D., *etc*. (naming all plaintiffs),~~
~~_____ Plaintiffs,~~

v. No.

First the Agency appealed from, and
the defendants, and parties not
appealing,
Defendants.

To each of the above-named defendants:

You are hereby summoned and required to file an answer in this case or otherwise file your appearance in the office of the clerk of this court within 35 days after the date of this summons.

This summons is served upon you by registered or certified mail pursuant to the provisions of the Administrative Review Law.

Witness , 20

(Seal of Court)

Clerk of Court

Plaintiff's Attorney (or plaintiff, if he is not represented by attorney)
Address
Telephone No.
Facsimile Telephone No.
E-Mail Address

(If service by facsimile transmission will be accepted, the telephone number of the plaintiff or plaintiff's attorney's facsimile machine is additionally required.)

(b) Service. The clerk shall promptly serve each defendant by mailing a copy of the summons by registered or certified mail as provided in the Administrative Review Law. Not later than 5 days after the mailing of copies of the summons, the clerk shall file a certificate showing that he served the defendants were served by registered or certified mail pursuant to the provisions of the Administrative Review Law.

(c) Appearance. The defendant shall appear not later than 35 days after the date the summons bears.

(d) Other Rules Applicable. Rules 181(b), 182(b), 183, and 184 shall apply to proceedings under the Administrative Review Law.

(e) Record on Appeal. The original copy of the answer of the administrative agency, consisting of the record of proceedings (including the evidence and exhibits, if any) had before the administrative agency, shall be incorporated in the record on appeal unless the parties stipulate to less, or the trial court after notice and hearing, or the reviewing court, orders less.

Amended July 30, 1979, effective October 15, 1979; amended May 28, 1982, effective July 1, 1982; amended April 27, 1984, effective July 1, 1984; amended October 30, 1992, effective November 15, 1992; amended May 30, 2008, effective immediately; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

(Revised April 27, 1984)

As originally adopted, Rule 291 carried forward the provisions of former Rule 71 without substantial change. Paragraphs (a) through (d) remain as originally adopted. In 1979, paragraph (e) was amended in four respects. First, language was added to make it clear that the exhibits, as well as any other "evidence," constitute a part of the record of proceedings had before the administrative agency. Second, it was provided that the parties may stipulate for inclusion in the record on appeal of less than the full record of proceedings. Third, it was provided that, if the trial court orders less, it must do so after notice and hearing. Fourth, it was provided that the reviewing court, without notice and hearing, may order less.

Section 3-105 of the Code of Civil Procedure was amended, effective July 13, 1982, and, in 1984, paragraph (b) of this rule was amended to allow service of summons by certified mail, as well as registered mail.

Rule 292. Form of Summons in Proceedings to Review Orders of the Illinois Workers' Compensation Commission

Upon the filing of a written request to commence a proceeding to review an order of the Illinois Workers' Compensation Commission under either the Workers' Compensation Act, approved July 9, 1951, as amended, or the Workers' Occupational Diseases Act, approved July 9, 1951, as amended, the clerk of the circuit court shall issue a summons by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix. ~~in substantially the following form to the Commission and all other parties in interest:~~

~~In the Circuit Court of the _____ Judicial Circuit,~~

~~_____ County, Illinois.~~

~~(Or, In the Circuit Court of Cook County, Illinois.)~~

~~_____,~~

~~Petitioner,~~

~~v.~~

~~No. _____~~

~~The~~

~~Illinois Workers' Compensation Commission~~

~~and _____~~

~~_____~~

~~_____~~

~~_____,~~

~~Respondents.~~

~~SUMMONS~~

~~To each respondent:~~

~~You are hereby summoned and required to file your appearance on or before _____, 20___, in the above entitled proceeding, in the office of the clerk of this court; and the Illinois Workers' Compensation Commission shall, on or before _____, 20___, certify and file, in the above-entitled proceeding, in the office of the clerk of this court, a transcript of the proceedings had before the~~

~~Commission, in Illinois Workers' Compensation Commission No. _____, in which a decision or award was rendered on _____, 20___, by the Illinois Workers' Compensation Commission for _____ and against _____.~~

~~Witness_____, 20___~~

~~(Seal of Court)~~

~~_____~~
~~Clerk of the Circuit Court~~

~~Name _____~~
~~Attorney for _____~~
~~Address _____~~
~~Telephone No. _____~~

~~Note: Pursuant to law, proceedings for judicial review shall be commenced within 20 days of the receipt of notice of the decision of the Commission. The summons shall be issued by the clerk of such court upon written request, returnable on a designated return day, not less than 10 nor more than 60 days from the date of issuance thereof.~~

~~On _____, 20___, in accordance with law, I mailed a copy of this summons, postage prepaid, to the office of the Illinois Workers' Compensation Commission and to the following parties in interest or their attorney or attorneys of record:~~

~~Respondent _____~~
~~Address _____~~
~~Dated _____, 20___~~

~~_____~~
~~Clerk of Court~~

Adopted April 27, 1984, effective July 1, 1984; amended October 9, 1984, effective November 1, 1984; amended October 15, 2004, effective January 1, 2005; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

Rule 292 was adopted in 1984 in order to insure uniform adherence to the requirements of Public Act 83-360 and Public Act 83-361, which make summons, rather than writ of *certiorari*, the proper device for the commencement of review of Industrial Commission orders. The proceedings must be commenced within 20 days of the receipt of notice of the decision of the Commission. The summons shall be issued by the clerk of the circuit court upon written request, returnable on a designated return day, not less than 10 nor more than 60 days from the date of issuance of the summons.

Rule 293. Jury Trial in Involuntary Admission Proceeding

Upon request by a respondent for a jury trial on whether he/she is subject to involuntary admission on an inpatient or outpatient basis in accordance with 405 ILCS 5/3-802, the court shall schedule said jury trial to commence within 30 days of the request.

Any continuance of the jury trial setting shall not extend beyond 15 days, except to the extent that continuances are requested by the respondent pursuant to 405 ILCS 5/3-800(b).

Committee Comments

This rule was adopted to clarify the time limitation that a trial court has in which to convene a jury in a mental health commitment hearing and to make that requirement mandatory. Any mental health petition for involuntary commitment not timely set for hearing is subject to dismissal.

Adopted April 3, 2017, eff. immediately.

Rule 294. Reserved

Rule 295. Matters Assignable to Associate Judges

The chief judge of each circuit or any circuit judge designated by him may assign an associate judge to hear and determine any matters except the trial of criminal cases in which the defendant is charged with an offense punishable by imprisonment for more than one year. Upon a showing of need presented to the supreme court by the chief judge of a circuit, the supreme court may authorize the chief judge to make temporary assignments of individual associate judges to conduct trials of criminal cases in which the defendant is charged with an offense punishable by imprisonment for more than one year.

Amended June 26, 1970, effective July 1, 1970; amended effective October 7, 1970, April 1, 1971, July 1, 1971, and May 28, 1975.

Committee Comments
(Revised July 1, 1971)

Section 8 of article VI of the new Illinois constitution provides, "the Supreme Court shall provide by rule for matters to be assigned to Associate Judges." Accordingly, a new Rule 295 was drafted to replace the statute dealing with assignments to magistrates (Ill. Rev. Stat. 1969, ch. 37, par. 621 *et seq*.) and former Rule 295, which supplemented the statute.

The new rule leaves it to the chief judge of each circuit, who will know the capabilities of the associate judges in his circuit and the requirements for disposition of judicial business, to determine the kinds of matters other than the trial of major criminal cases that may be assigned to an associate judge. The restriction against assignment of the trial of major criminal cases does not prevent assignment of an associate judge to conduct proceedings other than the trial in such cases.

Rule 296. [Reserved] ~~Enforcement of Order for Support~~

~~**(a) Scope of Rule.** This rule applies to any proceeding in which a temporary, final, or modified order of support is entered as provided by law. No provision of this rule affects the enforcement provisions of section 706.1 of the Illinois Marriage and~~

Dissolution of Marriage Act (750 ILCS 5/706.1).

(b) Definitions. For the purposes of this rule:

(1) "Order for Support" means any order of the court which provides for the periodic payment of funds for the support of a child, maintenance of a spouse, or combination thereof, whether temporary, final, or modified;

(2) "Obligor" means the individual who owes a duty to make payments under an Order for Support;

(3) "Obligee" means the individual to whom a duty of support is owed or the individual's legal representative;

(4) "Payor" means any payor of income to an obligor.

(c) Payments to the Clerk. All payments required under all Orders for Support must be made to the clerk of the circuit court in the county in which the Order for Support was entered, or the clerk of the circuit court of any other county to which the payment obligation may be transferred, as provided by law. This requirement may not be waived by the court or parties.

(d) Order for Support. Whenever an Order for Support is to be entered or modified, the court, in addition to any other requirements of law, shall forthwith enter an Order for Support in quadruplicate. The prevailing party must complete the form order and present it to the court for the judge's signature.

(e) Notice of Financial Aid. The parties and counsel in any proceeding involving support must advise the court at the time of entry or modification of the order whether either the obligor or obligee or their children are receiving a grant of financial aid or support services under articles III through VI, or section 10–1, of the Illinois Public Aid Code, as amended 305 ILCS 5/arts. III through VI; 10–1), and the court must enter its findings of record.

(f) Petition for Abatement. Upon written petition of the obligor, and after due notice to obligee (and the Department of Healthcare and Family Services, if the obligee is receiving public aid), and upon hearing by the court, the court may temporarily reduce or totally abate the payments of support, subject to the understanding that those payments will continue to accrue as they come due, to be paid at a later time. The reduction or abatement may not exceed a period of six months except that, upon further written petition of the obligor, notice to the obligee, and hearing, the reduction or abatement may be continued for an additional period not to exceed six months.

(g) Clerk's Fund, Records and Disbursements. The clerks of the circuit courts receiving payments pursuant to orders for support under paragraph (c) of this rule shall maintain records of:

(1) all such monies received and disbursed, and

(2) any delinquencies on such payments as required by law and by administrative order of the Supreme Court of Illinois. Such records are admissible as evidence of payments received and disbursed. After receiving a payment pursuant to an Order for Support, the clerk shall promptly deposit that payment and issue a check drawn on an account of the circuit clerk to the obligee or other person or agency entitled thereto under the terms of the Order for Support. All payments shall be disbursed within seven days after receipt thereof by the clerk of the circuit court.

(h) Method of Payment to the Clerk of the Circuit Court. When local circuit court rules allow payment of Orders for Support by personal check and the obligor submits a personal check which is not honored by the institution upon which it is drawn, the clerk of the circuit court may direct that all future payments be made by certified check, money order, United States currency, or credit card (with statutory fee), unless otherwise ordered by the court, and the court may order obligor to pay $50 to defray the cost of processing the dishonored check, to be paid within a time period to be determined by the court. Notice of future nonacceptance of personal checks shall be sent by the clerk of the circuit court to the obligor or payor by regular mail at the obligor's or payor's last known mailing address. The clerk's proof of mailing shall be spread of record. If a personal check used in payment of an Order for Support is not honored at the institution upon which it is drawn, the clerk of the circuit court shall forthwith notify the State's Attorney of the county, the Attorney General, if that office has the duty of enforcing the Order for Support on which the check was written, or the attorney appointed pursuant to section (k) of this rule.

(i) Clerk's Notice of Delinquency. Whenever an obligor is 14 days delinquent in payments pursuant to an Order for Support, the clerk of the circuit court shall, within 72 hours thereof, transmit a notice of delinquency directed to the obligor at the obligor's last known mailing address, by regular U.S. mail, postage prepaid, specifying that the delinquency will be referred for

enforcement unless the payments due and owing, together with all subsequently accruing payments, are paid within seven days thereafter. The court may waive this notice requirement on a case-by-case basis, and direct that immediate enforcement commence against the obligor.

(j) Referral for Enforcement. If the delinquency and all subsequent accrued obligations are not paid within the time period as specified in paragraph (i) of this rule, the clerk of the circuit court shall promptly refer the matter for enforcement by reporting the delinquency to the State's Attorney of the county, the Title IV-D enforcement attorney, or the attorney appointed by the court pursuant to paragraph (k) of this rule. The clerk of the circuit court may complete, sign, and verify the petition for contempt and appropriate notices, under the supervision of the enforcement counsel, but is not required to provide investigative services unless otherwise required by local circuit court rules.

(k) Enforcement Counsel.

(1) Enforcement counsel for those receiving a grant of financial aid under article IV of the Illinois Public Aid Code and parties who apply and qualify for support services pursuant to section 10–1 of such code shall be as designated by an agreement made between the State of Illinois and United States government under 42 U.S.C. Title IV, part D.

(2) The State's Attorney of each county may prosecute any criminal contempt or civil contempt brought for the enforcement of an Order for Support if not in conflict with the agreement described above between the State of Illinois and the United States government.

(3) When the presiding judge of the county or of the domestic relations division receives a letter from the State's Attorney of the county declining enforcement of Orders for Support under this rule, the presiding judge shall appoint counsel, to be known as support enforcement counsel, on a contract basis. The fees and expenses of the support enforcement counsel shall be paid by the county. The court may assess attorney fees against an obligor found in contempt.

(4) If the counsel responsible for enforcement under the Illinois Department of Healthcare and Family Services or the State's Attorney of a county does not commence enforcement within 30 days after referral by the clerk of the circuit court, the court shall refer the matter to the support enforcement counsel of the county for further proceedings.

(5) Representation by counsel under this rule shall be limited to enforcement of Orders for Support and shall not include matters of visitation, custody, or property.

(6) A person entitled to monies under an Order for Support may institute independent enforcement proceedings. However, if enforcement proceedings under paragraph (k) of this rule are pending, then independent enforcement proceedings may be brought only by leave of court.

(l) Contempt Proceedings for Enforcement of Orders for Support. A failure to comply with payment obligations under an Order for Support may be enforced by contempt in the following manner:

(1) Petition for Adjudication of Contempt. The proceeding shall be initiated by the filing of a petition for adjudication of contempt in an action where an Order for Support was entered or as otherwise provided by law. The petition shall be verified pursuant to section 1–109 of the Code of Civil Procedure, as amended (735 ILCS 5/1–109), and specify in both its caption and body whether the relief sought is for indirect criminal contempt, indirect civil contempt, or both. The petition shall identify the relevant terms of the Order for Support being enforced, the court, and date of its entry, the last payment made under its provisions, the delinquency, and an allegation that the respondent obligor's failure to comply with the provisions of the Order for Support constitutes wilful indirect civil contempt, indirect criminal contempt, or both. A petition for adjudication of indirect civil contempt and indirect criminal contempt shall be filed in the same cause of action out of which the contempt arose.

(2) Notice of Hearing. A petition for adjudication of civil contempt may be presented ex parte to the court, which, if satisfied that prima facie evidence of civil contempt exists, may order the respondent to show cause why he should not be held in contempt, or may instead set the petition itself for hearing and order that notice be given to the respondent. Notice of hearing on a petition for indirect civil contempt may be served by regular mail, postage prepaid, to the respondent's last known mailing address, or by any method provided in Rule 105(b)(1) or (b)(2) (134 Ill. 2d Rules 105(b)(1), (b)(2)), as the court may direct. Notice by personal service shall be served not less than seven days prior to hearing, and notice by mail not less than 10 days prior to hearing. Upon petition for adjudication of indirect criminal contempt being presented to the court, the court shall set the matter for arraignment and order summons to issue for respondent.

(A) Body Attachment. If a respondent fails to appear after receiving notice, or if the petition for adjudication of contempt alleges facts to show that the respondent will not respond to a notice, will flee the jurisdiction of the court, or will attempt to conceal himself from service, the court may issue a body attachment on the respondent, addressed to all law enforcement officers in the State or, in proceedings for indirect criminal contempt, for the arrest of the respondent.

(B) Bond. The court may fix bond on the body attachment order or warrant of arrest, as the case may be.

(3) Contempt Hearing. If the petition prays that respondent be held in indirect criminal contempt, or both indirect criminal contempt and indirect civil contempt, the hearing shall be conducted according to the applicable rules of the criminal law. However, if the court at the time of respondent's first appearance notifies the respondent that, if found to be in indirect criminal contempt, he will not be incarcerated for more than six months, fined a sum up to $500, or both, then respondent will not be entitled to a trial by jury. At the contempt hearing, a certified copy of the records of the clerk of the circuit court shall be received in evidence to show the amounts paid to the clerk, the dates of such payments, and the dates and amounts of disbursals. In indirect civil contempt cases the respondent has the burden of proving that such failure to pay was not wilful and that he does not have the present means to comply with any purge order the court may impose. The burden of proof shall be by a preponderance of the evidence in a civil contempt proceeding and beyond a reasonable doubt in a criminal contempt proceeding. After hearing, the court may:

(A) find in favor of the respondent and dismiss the petition or discharge the rule, as the case may be;

(B) continue the hearing under such terms as the court deems appropriate, including an order to seek work, if unemployed;

(C) find in favor of the petitioner and impose sanctions specifically including, but not limited to, the following:

(i) a direction to seek employment, if unemployed, and to participate in job search, training and work programs as provided by law;

(ii) keep a detailed accounting of all income and expenditures and submit same to the court until further order;

(iii) impose a sentence of imprisonment or periodic imprisonment with an appropriate purge order;

(iv) assess a fine;

(v) assess attorney fees and costs;

(vi) initiate immediate wage withholding; or

(vii) such other sanctions as the court deems appropriate.

(m) Supervision by the Administrative Office of the Illinois Courts. The Administrative Office of the Illinois Courts shall exercise supervision over the operation of this rule and shall submit an annual report to the Supreme Court together with its recommendation for any modification or amendment thereto. Oversight shall include, but not be limited to, promulgating forms necessary to carry out the intent and purpose of this rule, initiating administrative procedures and standards for the effective operation of the rule, providing liaison between the various agencies of State and Federal government concerning enforcement of Orders for Support and between the various branches of State government, and such other duties as may be directed by the Supreme Court from time to time hereafter.

(n) Effective Date. The Supreme Court will authorize experimental sites to operate pursuant to this rule, in counties in which both the chief circuit judge and the clerk of the circuit court have agreed to undertake the experimental use of the procedures contained herein, and have jointly sought the Court's permission to do so, by filing a petition with the Administrative Director.

(o) Order for Support Form. The Order for Support shall be in the form prescribed by local circuit court rule or, in the absence of a local rule, the form approved by the Director of the Administrative Office of the Illinois Courts.

Adopted February 1, 1989, effective immediately; amended May 30, 2008, effective September 1, 2008; repealed and reserved October 1, 2010, effective immediately.

Rule 297. Reserved

Rule 298. Application for Waiver of Court Fees

(a) Contents. An Application for Waiver of Court Fees in a civil action pursuant to 735 ILCS 5/5-105 shall be in writing and signed by the applicant or, if the applicant is a minor or an incompetent adult, by another person having knowledge of the facts.

(1) The contents of the Application must be sufficient to allow a court to determine whether an applicant qualifies for waiver of fees pursuant to 735 ILCS 5/5-105, and shall include information regarding the applicant's household composition; receipt of need-based public benefits; income; expenses; and nonexempt assets.

(2) Applicants shall use the ~~The court shall provide and applicants shall be required to use a standardized form expressly titled~~ "Application for Waiver of Court Fees" adopted by the Illinois Supreme Court Access to Justice Commission, which can be found in the Article II Forms Appendix.

(b) Ruling. The court shall either enter a ruling on the Application or shall set the Application for a hearing requiring the applicant to personally appear in a timely manner. The court may order the applicant to produce copies of certain documents in support of the Application at the hearing. The court's ruling on an Application for Waiver of Court Fees shall be made according to standards set forth in 735 ILCS 5/5-105. If the Application is denied, the court shall enter an order to that effect stating the specific reason for the denial. If the Application is granted, the court shall enter an order permitting the applicant to sue or defend without payment of fees, costs or charges.

(c) Filing. No fee may be charged for filing an Application for Waiver of Court Fees. The clerk must allow an applicant to file an Application for Waiver of Court Fees in the court where his case will be heard.

(d) Cases involving representation by civil legal services provider or lawyer in court-sponsored pro bono program. In any case where a party is represented by a civil legal services provider or attorney in a court-sponsored pro bono program as defined in 735 ILCS 5/5-105.5, the ~~attorney representing that party shall file a certification with the court in the form attached to this rule and that~~ party shall be allowed to sue or defend without payment of fees, costs or charges as defined in 735 ILCS 5/5-105(a)(1) without necessity of an Application under this rule. Instead, the attorney representing the party shall file a certification prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

~~**RULE 298 CERTIFICATION FOR WAIVER OF FEES REPRESENTATION BY CIVIL LEGAL SERVICES PROVIDER OR COURT-SPONSORED PRO BONO PROGRAM**~~

~~Pursuant to Supreme Court Rule 298, the undersigned counsel hereby certifies that he/she is an attorney for _____ (*name of organization or court program*), a civil legal services provider or court-sponsored pro bono program as defined in 735 ILCS 5/5-105.5(a), and that _____(*name of organization or court program*) has made the determination that _____ (*name of party*) has income of 125% or less of the current official poverty guidelines or is otherwise eligible to receive services under the eligibility guidelines of the civil legal services provider or court-sponsored pro bono program. As a result, under Supreme Court Rule 298, _____ (*name of party*) is eligible to sue or defend without payment of fees, costs or charges as defined at 735 ILCS 5/5-105(a)(1).~~

~~_____~~

~~_____~~

~~Attorney Certification~~

~~**Name of Organization or Court Program:** _____~~
~~**Attorney Name** _____~~
~~**Attorney No.** _____~~
~~**Address** _____~~
~~**City, State, Zip** _____~~
~~**Telephone** _____~~

Amended October 20, 2003, effective November 1, 2003; amended September 25, 2014, eff. immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Rule 299. Compensation for Attorneys Appointed to Represent Indigent Parties

(a) Attorneys who are appointed by the courts of this state to represent indigent parties shall be entitled to receive a reasonable fee for their services. In arriving at a reasonable fee for appointed counsel's services, the appointing court should consider: (1) the time spent and the services rendered; (2) the attorney's skill and experience; (3) the complexity of the case; (4) the overhead costs and the burden on the attorney's practice; (5) the rate of compensation for comparable services in the locality; (6) the reduction of the comparable fee by a *pro bono* factor; (7) the number of appointments given to the attorney; and (8) the availability of public funds. No single factor is determinative in establishing a reasonable fee.

(b) Hourly Rate. An attorney appointed by a court in this state to represent an indigent party may be compensated at a rate set by local rule, but not less than $75 per hour for time expended in court and $50 per hour for time reasonably expended out of court.

(c) Maximum Amount. Maximum compensation is limited as follows:

For representation of an indigent defendant charged with a misdemeanor, $750.

For indigent persons: (1) charged with one or more felonies; (2) whose parental rights are sought to be terminated pursuant to the Adoption Act (750 ILCS 50/8) or the Juvenile Court Act (705 ILCS 405/1 through 5); (3) whom the State is seeking to commit as a sexually dangerous person pursuant to the Sexually Dangerous Persons Act (725 ILCS 205/0.01 *et seq.*) or as a sexually violent person pursuant to the Sexually Violent Persons Commitment Act (725 ILCS 207/1 *et seq.*); (4) who have an absolute right to appeal from determinations concerning categories (1), (2) and (3) above, the compensation to be paid to an attorney shall not exceed $5,000.

(d) Waiving Maximum Amounts. Payment in excess of any maximum amount provided in paragraph (c) may be made for extended or complex representation only when the court making the appointment makes an express, written finding that good cause and exceptional circumstances exist and that the amount of the excess payment is necessary to provide fair compensation and the chief judge of the circuit or the presiding judge of the applicable division of the circuit court of Cook County approves the excess payment. All petitions to exceed the maximum fee guidelines must be approved prior to the guidelines being exceeded.

Adopted February 10, 2006, effective July 1, 2006.

Committee Comments
(February 10, 2006)

Section 113-3 of the Code of Civil Procedure (725 ILCS 5/113-3) provides: "In all cases, except where the penalty is a fine only, if the court determines that the defendant is indigent and desires counsel, the Public Defender shall be appointed as

counsel." Section 113-3 also provides under which circumstances counsel other than a public defender may be appointed.

The Juvenile Court Act provides for counsel to be appointed to all indigent parents threatened with the loss of parental rights (705 ILCS 405/1-5(1)). In *In re Adoption of L.T.M.*, 214 Ill. 2d 60 (2005), the supreme court held that the equal protection clause of the fourteenth amendment to the United States Constitution mandated that indigent parents threatened with the loss of parental rights under the Adoption Act (750 ILCS 50/8) are also entitled to appointed counsel.

Section 5 of the Sexually Dangerous Persons Act (725 ILCS 205/5) provides that persons whom the State seeks to confine pursuant to the Act are entitled to be represented by counsel. Section 30(e) of the Sexually Violent Persons Commitment Act (725 ILCS 207/30(e)) provides that the court shall appoint counsel if the person named in the petition claims or appears to be indigent.

In setting the hourly rate and total compensation, the Committee took into consideration the fact that section 113-3(c)'s provisions of $40 for time spent in court and $30 for all other time, applicable only to Cook County, had not been changed in more than 20 years. Section 10(b) of the Capital Crimes Litigation Act (725 ILCS 124/10(b)) provides that trial counsel appointed to represent indigents who are charged in capital cases may be paid a "reasonable rate not to exceed $125 per hour." The Committee also considered 18 U.S.C. §3006A ("Adequate Representation of Defendants"), which gives the federal Judicial Conference the authority to set a rate of $90 per hour for time expended in court or for time expended out of court. Section 3006A also sets $7,000 as a maximum fee in felony cases, $2,000 in misdemeanor cases and $5,000 in appellate cases.

Rule 300. Reserved