Illinois Supreme Court Rules

Current June 17, 2022

Article I. General Rules

Rule 1. Applicability

General rules apply to both civil and criminal proceedings. The rules on proceedings in the trial court, together with the Civil Practice Law and the Code of Criminal Procedure, shall govern all proceedings in the trial court, except to the extent that the procedure in a particular kind of action is regulated by a statute other than the Civil Practice Law. The rules on appeals shall govern all appeals.

Amended October 21, 1969, effective January 1, 1970; amended February 19, 1982, effective April 1, 1982; amended May 28, 1982, effective July 1, 1982.

Committee Comments

(Revised July 1, 1971)

This rule changed former Rule 1, in effect until January 1, 1967, which provided that the rules applied only to civil proceedings unless the rules or their context indicated otherwise. In the revised rules, separate articles contain the rules applicable to civil proceedings (articles II and III) and those applicable to criminal proceedings (articles IV and VI). Certain general provisions (article I) apply to both.

The second sentence of Rule 1 establishes for trial court proceedings the same standard for determining applicability that appears in section 1 of the Civil Practice Act.

The third sentence was revised in 1969 when the appeals rules were broadened to cover all appeals. The authority for supersedure of inconsistent statutes is found in the provision of the Judicial Article, effective January 1, 1964 (former Illinois Const., art. VI, §7), repeated in the new constitution effective July 1, 1971 (art. VI, §16), that directs the Supreme Court to "provide by rule for expeditious and inexpensive appeals." See Committee Comments to Civil Appeals Rules and Rule 601.

Supersedure by the criminal appeals rules (Rule 601 *et seq.*) of the appeals provisions of the Code of Criminal Procedure of 1963 is covered by Rule 601.

The effective date of the revised rules and their applicability to pending proceedings are covered in the order adopting the rules.

Rule 2. Construction

(a) Standards. These rules are to be construed in accordance with the appropriate provisions of the Statute on Statutes (5 ILCS 70/0.01 *et seq.*), and in accordance with the standards stated in

section 1-106 of the Code of Civil Procedure (735 ILCS 5/1-106).

(b) Definitions. The following meanings are to be given terms used in these rules:

(1) "Judge" also includes associate judge and justice.

(2) "Judgment" also includes decree, determination, decision, order, or portion thereof.

(3) "Document" means a pleading, motion, photograph, recording, or other record of information or data required or permitted to be filed, either on paper or in an electronic format.

(4) "Written" or "in writing" means in the form of a document, whether electronic or on paper.

(5) "Signed" or "signature" also includes the execution of any court-approved digital signature.

(6) "Original" is the first authentic instrument of a document, recording, or photograph; however, if the transmission is by approved electronic means, the transmission received by the clerk of the court shall serve as the original.

(7) "In person or by attorney," "in person or through an attorney," "in person or by counsel," or "in personor by substitute counsel" includes such individual appearing remotely, including by telephone or video conference under Rules 45 and 241 and any other rules governing remote appearances.

Amended effective July 1, 1971; amended May 28, 1982, effective July 1, 1982; amended May 30, 2008, effective immediately; amended Jan. 4, 2013, eff. immediately; amended June 22, 2017, eff. July 1, 2017; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Committee Comments

(Revised July 1, 1971)

This rule was adopted effective January 1, 1967.

Paragraph (a) makes it clear that the same principles that govern the construction of statutes are applicable to the rules.

Paragraph (b) defines terms that appear frequently in the rules. Like article VI of the Illinois Constitution the rules use the single word "judgment," instead of "judgment, decree," *etc*.

Subparagraph (b)(1) was amended in 1971 to delete the reference to "magistrate," consistent with the abolition of the office of magistrate by the Illinois Constitution of 1970.

Rule 3. Rulemaking Procedures

(a) Purpose and Applicability.

(1) These procedures are adopted to provide for the orderly and timely review of proposed rules and proposed amendments to existing rules of the Supreme Court; to provide an opportunity for comments and suggestions by the public, the bench, and the bar; to aid the Supreme Court in discharging its rulemaking responsibilities; to make a public record of all

such proposals; and to provide for public access to an annual report concerning such proposals.

(2) The Supreme Court reserves the prerogative of departing from the procedures of this rule. An order of the Supreme Court adopting any rule or amendment shall constitute an order modifying these procedures to the extent, if any, they have not been complied with in respect to that proposal.

(b) Supreme Court Rules Committee. There shall be a Rules Committee which shall be appointed by the Supreme Court. The Administrative Office of the Illinois Courts shall serve as Secretary of the Rules Committee. The Rules Committee shall have the following responsibilities:

(1) To implement rulemaking procedures, as provided in paragraph (d) of this rule, for proposed rules or amendments to existing rules received from the Secretary of the Rules Committee.

(2) To periodically review rules in areas which no other Supreme Court committee, board, or commission is specifically charged with the responsibility for reviewing to ensure that such rules facilitate the administration of justice.

(3) To conduct public hearings and submit the annual report as required by administrative order of the Supreme Court. The annual report shall be a public record.

(c) Initiation of Proposal.

Proposed rules and proposed amendments to existing rules of the Supreme Court should be forwarded to the Administrative Office of the Illinois Courts, c/o Secretary—Supreme Court Rules Committee, 222 N. LaSalle Street, 13th Floor, Chicago, Illinois 60601 or submitted via e-mail to RulesCommittee@illinoiscourts.gov. All proposals shall offer specific language for the proposed rule or amendment, as well as a concise explanation of the proposal.

(d) Procedures for Proposed Rules and Rule Amendments.

(1) If the substance of a proposal received under paragraph (c) of this rule is within the scope of a Supreme Court committee, board, or commission, the Secretary of the Rules Committee shall forward the proposal to the appropriate committee, board, or commission for review and recommendation.

The Secretary of the Rules Committee also shall forward a copy of the proposal to the Rules Committee, along with notice of the Supreme Court committee, board, or commission to which the proposal has been forwarded.

The Rules Committee shall forward a copy of the proposal to the Clerk of the Supreme Court where it will be given a number and placed upon the docket of the Clerk of the Supreme Court.

The committee, board, or commission to which the proposal has been forwarded shall review the proposal for content and style. Within 12 months of the transmission of the proposal from the Secretary of the Rules Committee, the committee, board, or commission to which the proposal has been forwarded shall advise the Secretary of the Rules Committee whether the proposal is recommended for adoption by the Supreme Court. If the proposal is recommended for adoption, or if the committee, board, or commission to which the proposal was forwarded

does not make a recommendation within 12 months, the Rules Committee may, upon notification to the committee, board, or commission, place the proposal on the agenda for the next public hearing. In its annual report to the Supreme Court, the Rules Committee shall report the docket number, the content of the proposal, any report submitted by the Supreme Court committee, board, or commission (including a minority report), the response to the proposal, any comments or revisions submitted by the Supreme Court committee, board, or commission, the Rules Committee's recommendation, and any alternative proposal the Rules Committee developed in response to public comment.

If the committee, board, or commission to which the proposal has been forwarded recommends that the proposal should not be adopted by the Supreme Court, the Rules Committee shall not place the proposal on the agenda for public hearing, but shall report the nonrecommended status to the Clerk of the Supreme Court and the Supreme Court in its annual report.

(2) If the substance of a proposal received under paragraph (c) is in an area where no other committee, board, or commission is specifically charged with responsibility, the Secretary of the Rules Committee shall forward the proposal to the Rules Committee for review of content and style.

The Rules Committee shall forward a copy of the proposal to the Clerk of the Supreme Court where it will be given a number and placed upon the docket of the Clerk of the Supreme Court. If, after review, the Rules Committee determines that the proposal is recommended for adoption by the Supreme Court, the Rules Committee shall place the proposal on the agenda for the next public hearing. In its annual report to the Supreme Court, the Rules Committee shall report the docket number, the content of the proposal, the response to the proposal, the Rules Committee's recommendation, and any alternative proposal the Rules Committee developed in response to public comment.

If the proposal submitted does not have substantial merit, is duplicative of pending proposals, or is not within the Supreme Court's rulemaking authority, the Rules Committee shall not place the proposal on the agenda for public hearing. However, the Rules Committee shall report the proposal as not recommended in its annual report to the Supreme Court.

(3) If a proposed rule or an amendment to an existing rule is submitted under paragraph (c) by a Supreme Court committee, board, or commission, the Secretary of the Rules Committee shall forward the proposal to the Rules Committee. The Rules Committee shall forward a copy of the proposal to the Clerk of the Supreme Court where it will be given a number and placed upon the docket of the Clerk of the Supreme Court. The Rules Committee shall not review the proposal.

The Rules Committee shall place the proposal on the agenda for the next public hearing. In its annual report to the Supreme Court, the Rules Committee shall report the docket number, the content of the proposal, any report submitted by the Supreme Court committee, board, or commission (including a minority report), the response to the proposal, any comments or revisions submitted by the Supreme Court committee, board, or commission, the Rules Committee's recommendation, and any alternative proposal the Rules Committee developed

in response to public comment.

(e) Responsibilities of Other Committees. Each committee, board, or commission appointed by the Supreme Court, other than the Rules Committee, shall have the following responsibilities:

(1) To periodically review the entire body of rules for which the Supreme Court has indicated the committee, board, or commission is responsible to ensure that those rules continue to facilitate the administration of justice.

(2) To review proposed amendments to existing rules or proposals for new rules transmitted to the committee, board, or commission pursuant to paragraph (c) of this rule. Within 12 months of the transmission of the proposal from the Secretary of the Rules Committee, the committee, board, or commission shall advise the Secretary of the Rules Committee whether the proposal is recommended or not recommended for adoption by the Supreme Court.

If the committee, board, or commission determines that a proposal that has been forwarded to it by the Secretary of the Rules Committee should be adopted, it shall so inform the Secretary of the Rules Committee and provide the Secretary of the Rules Committee with the original proposal and a statement of the committee's, board's, or commission's reasoning.

If the committee, board, or commission determines that a proposal that has been forwarded to it by the Secretary of the Rules Committee should not be adopted, it shall so inform the Secretary of the Rules Committee and provide the Secretary of the Rules Committee with the original proposal and a statement of the committee's, board's, or commission's reasoning.

(3) To designate the committee, board, or commission chair, or another member, to represent the committee, board, or commission at any Rules Committee public hearing where a proposal recommended by the committee, board, or commission is scheduled to be held out for public comment. The committee, board, or commission chair, or his or her designee, may sit with the Rules Committee for purposes of answering questions or addressing testimony from individuals offering public comment on the committee's, board's, or commission's proposal.

(4) Nothing in this rule shall preclude a Supreme Court committee, board, or commission from holding a public hearing independently of the Rules Committee, with prior approval of the Supreme Court.

(f) Submissions Other Than Annual Report. When the Rules Committee makes a submission of a proposed rule or amendment separate from its annual report, the committee shall, to the degree practicable, comply with the content requirements of the Supreme Court's administrative order concerning notice and hearing and shall accompany the submission with a statement of:

(1) its reasons for believing that the Court should take action on its proposal prior to the time for action on the next annual submission, and

(2) describe the steps taken by the committee to comply with the Supreme Court's administrative order regarding public notice, opportunity for comment, and public hearing.

(g) Distribution of New Rules or Amendments. Following the adoption of new rules or amendments, the Clerk of the Supreme Court shall promptly cause copies thereof to be distributed.

(h) Effective Date of Rule Changes. The effective date of all new rules or amendments shall be as ordered by the Supreme Court. If an effective date is not ordered, the new rule or amendment shall take effect on the following July 1.

Adopted September 28, 1994, effective October 1, 1994; amended December 3, 1997, effective January 1, 1998; amended October 5, 2000, effective November 1, 2000; amended May 24, 2006, effective immediately; amended March 22, 2010, effective immediately; amended June 22, 2017; eff. July 1, 2017; amended Dec. 1, 2021, eff. immediately.

Amended Administrative Order, MR No. 10549

ADMINISTRATIVE ORDER
MR No. 10549

(a) Public Meetings

(1) Except as otherwise provided in Rule 3, no rule shall be presented to the Court for adoption without first having been held out for public comment by the bench, bar, and public at a public hearing of the Rules Committee.

(2) All proposals for which the Rules Committee has completed its style and content review and those proposals submitted to the Rules Committee by other Supreme Court committees, boards, or commissions recommended for adoption by the Supreme Court shall be considered at the next public hearing. Any proposal on which the Rules Committee has not completed its content review or any proposal which a Supreme Court committee, board, or commissions has not forwarded to the Rules Committee for placement on the public hearing agenda will not be considered at the next public hearing.

(3) A public hearing may be scheduled when either the significance of a particular proposal or the number of proposals ready for public comment would justify holding such a hearing. At least 60 days prior to the date designated for the public hearing, the Rules Committee shall cause notice of the public hearing and an invitation for comments to be distributed by the most economical means, including notification through the Illinois Court's electronic messaging services, such as list mail or Twitter broadcasts. Additionally, the notice shall be distributed to each clerk of the court to be posted in a conspicuous place. The text of the proposed rules or amendments shall be posted on the Court's website.

(4) Each committee, board, or commission of the Supreme Court may within 21 days following the public hearing respond to public comments received by submitting to the Rules Committee:

(i) any revision to a proposal that was recommended by the committee, board, or

commission, or

(ii) responsive comments of the committee, board, or commission.

(b) Annual Report on Proposed Rules and Amendments

(1) The Rules Committee shall submit its annual report on rules to the Chief Justice and file it with the Clerk of the Supreme Court.

(2) The report shall include for each proposal: the docket number, the content of the proposal, any report submitted by the Supreme Court committee, board, or commission (if applicable) including any minority report, the response to the proposal, any comments or revisions submitted by the Supreme Court committee, board, or commission (if applicable), the Rules Committee's recommendation, and any alternative proposal the Rules Committee developed in response to public comment.

(3) The annual report shall be a public record.

Adopted September 28, 1994, effective October 1, 1994; amended December 3, 1997, effective January 1, 1998; amended October 5, 2000, effective November 1, 2000; amended March 22, 2010, effective immediately; amended June 22, 2017, eff. July 1, 2017; amended Dec. 1, 2021, eff. immediately.

Rules 4-5. Reserved

Rule 6. Citations

Citation of Illinois cases filed prior to July 1, 2011, and published in the Illinois Official Reports shall be to the Official Reports, but the citation to the North Eastern Reporter and/or the Illinois Decisions may be added. For Illinois cases filed on or after July 1, 2011, and for any case not published in the Illinois Official Reports prior to that date and for which a public-domain citation has been assigned, the public-domain citation shall be given and, where appropriate, pinpoint citations to paragraph numbers shall be given; a citation to the North Eastern Reporter and/or the Illinois Decisions may be added but is not required. Citation of cases from other jurisdictions that do not utilize a public-domain citation shall include the date and may be to either the official state reports or the National Reporter System, or both. If only the National Reporter System citation is used, the court rendering the decision shall also be identified. For other jurisdictions that have adopted a public-domain system of citation, that citation shall be given along with, where appropriate, pinpoint citations to paragraph numbers; a parallel citation to an additional case reporter may be given but is not required. Textbook citations shall include the date of publication and the edition. Illinois statutes shall generally be cited to the Illinois Compiled Statutes (ILCS) but citations to the session laws of Illinois or to the Illinois Revised Statutes shall be made when appropriate.

Adopted January 20, 1993, effective immediately; amended May 31, 2011, effective July 1, 2011.

Commentary

(May 31, 2011)

Background

The system of case citation that has historically prevailed in the United States relies upon the elements of printed case reporters, that is, volume number, case name, beginning and pinpoint page numbers, and year of filing. In Illinois, citations have been made to our state's official reporters (Illinois Reports and Illinois Appellate Reports), with parallel citations to the appropriate West regional reporter (North East Reporter and/or Illinois Decisions) also allowed. But reliance upon printed reports for access to the courts' opinions has diminished with the rise of electronic databases, such as those found on the Court's own Internet website, Westlaw and Lexis-Nexis, and various CD-ROMs. In this state, the Illinois Supreme and Appellate Courts' opinions have been made available on the judiciary's website since 1996. However, the requirement that case citations be made to printed reporters has prevented direct citation of those opinions, even though they are now widely available on various electronic databases.

To remedy this situation, the Illinois Supreme Court has amended Supreme Court Rule 23, and has entered an administrative order in relation to Rule 23, to direct Illinois reviewing courts to assign, at the time of filing, public-domain case designator numbers (*e.g.*, "2011 IL 102345") , as well as internal paragraph numbers, to all opinions and Rule 23 orders filed after July 1, 2011. Further, any opinions that were filed prior to July 1, 2011, but not released for publication until a later date will be assigned a public-domain case designator number and internal paragraph numbers by the Reporter of Decisions. All opinions that have been assigned public-domain case designators and paragraph numbers will be posted to the Illinois judiciary's website.

Additionally, Rule 6 has been amended to require the use of public-domain case citations for all Illinois reviewing court opinions filed or released for publication after July 1, 2011. The amendments to Rules 6 and 23 will thus introduce a new system of case citations to Illinois law based directly on the decisions of the courts. It should be noted, though, that while amended Rule 6 requires a citation to the courts' public-domain numbering and paragraphing scheme in lieu of an Illinois Official Reports citation, the rule continues to allow citations to the unofficial regional reporters.

Citations

A public-domain case designators is unique to each opinion and is comprised of the year of decision, the court abbreviation, and a unique identifier number derived from the docket number. A public-domain citation shall include the designator preceded by the case title and will be in accord with the following examples:

Supreme Court

People v. Doe, 2011 IL 102345

Appellate Court Districts

People v. Doe, 2011 IL App (1st) 101234

People v. Doe, 2011 IL App (2d) 101234

People v. Doe, 2011 IL App (3d) 101234

People v. Doe, 2011 IL App (4th) 101234

People v. Doe, 2011 IL App (5th) 101234

Appellate Court Workers' Compensation Division

Doe v. Illinois Workers' Compensation Comm'n, 2011 IL App (1st) 101234WC

In the above, a citation to *People v. Doe*, 2011 IL 102345, shows *People v. Doe* as the case name; 2011 as the year of decision; the Illinois Supreme Court as the court of decision; and 102345 as the court-assigned identifier number, which, in the Supreme Court, is the docket number and, in the Appellate Court, is the last six digits of the docket number.

Where a subsequent opinion is filed under the same docket number, such as upon reconsideration of the cause after remand, a sequential capital letter will be appended to the unique-identifier number, regardless of the year-designation portion of the citation:

People v. Doe, 2011 IL App (1st) 101236

People v. Doe, 2012 IL App (1st) 101236-B

Orders filed under Illinois Supreme Court Rule 23 will have the letter "U" appended to the unique-identifier number:

People v. Roe, 2011 IL App (5th) 101237-U

Additionally, Illinois reviewing court opinions will include internally numbered paragraphs. Where a pinpoint citation to an opinion is appropriate, the citation shall include the public-domain citation followed by the pinpoint paragraph or paragraphs of the opinion. *E.g.*:

People v. Doe, 2011 IL App (1st) 101234, ¶ 15

People v. Doe, 2011 IL App (1st) 101234, ¶¶ 21-23

People v. Doe, 2011 IL App (1st) 101234, ¶¶ 57, 68

For those opinions filed prior to July 1, 2011, but not released by the filing court for publication

until after that date, the Reporter of Decisions office will add internal paragraph numbers, as well as the public-domain designator numbers.

Rule 7. Reserved

Rule 8. Case and Document Accessibility

(a) All cases and documents are presumed to be accessible by the court and the clerk. Clerks shall limit access to case information and documents that are not identified as public to the clerk and/or limited supervisory staff through the use of access codes restricting access. Access to court records and documents remotely over the Internet shall be as authorized by the Illinois Supreme Court Remote Access Policy.

(b) Unless otherwise specified by Rule, statute or order of court, access to case information and documents maintained by the clerk are defined as follows:

(1) "Public" means a document or case that is accessible by any person upon request.

(2) "Impounded" means a document or case that is accessible only to the parties of record on a case; otherwise, the document or case is only accessible upon order of court.

(3) "Confidential" means a document or case that is accessible only to the party submitting the document or filing the case; otherwise, the document or case is only accessible upon order of court.

(4) "Sealed" means a document or case that is accessible only upon order of court.

(5) "Expunged" means a document or case that is accessible only upon order of court as provided in section 5.2(E) of the Criminal Identification Act (20 ILCS 2630/5.2(E)).

(c) Notwithstanding the above, the court may enter an order restricting access to any case or document per order of court.

Adopted Sept. 29, 2021, eff. Jan. 1, 2022.

Rule 9. Electronic Filing of Documents

(a) Electronic Filing Required. Unless exempt as provided in paragraph (c), all documents in civil cases shall be electronically filed with the clerk of court using an electronic filing system approved by the Supreme Court of Illinois.

(b) Personal Identity Information. If filing a document that contains Social Security numbers as provided in Rule 15 or personal identity information as defined in Rules 138 or 364, the filer shall adhere to the procedures outlined in Rules 15, 138, and 364.

(c) Exemptions. The following types of documents in civil cases are exempt from electronic filing:

(1) Documents filed by a self-represented litigant incarcerated in a local jail or correctional facility at the time of the filing;

(2) Wills;

(3) Documents filed under the Juvenile Court Act of 1987; and

(4) Documents filed by any person, including an attorney or a self-represented litigant, with a disability, as defined by the Americans with Disabilities Act of 1990, whose disability prevents e-filing; and

(5) Documents in a specific case upon good cause shown by certification.

(A) Good cause exists where a self-represented litigant is not able to e-file documents for the following reasons:

(i) no computer or Internet access in the home and travel represents a hardship;

(ii) a language barrier or low literacy (difficulty reading, writing, or speaking in English); or

(iii) a self-represented litigant tries to e-file documents but is unable to complete the process and the necessary equipment and technical support for e-filing assistance is not available to the self-represented litigant.

(B) Good cause also exists where any person, including an attorney or self-represented litigant, is filing a pleading of a sensitive nature, such as a petition for an order of protection or a civil no-contact/stalking order.

A Certification for Exemption From E-filing, which includes a certification under section 1-109 of the Code of Civil Procedure, and any accompanying documents shall be filed with the court—in person or by mail. The Certification for Exemption From E-filing and documents may also be filed by other means, such as e-mail, if permitted by the local court. The court shall provide, and parties shall be required to use, a standardized form expressly titled "Certification for Exemption From E-filing" adopted by the Illinois Supreme Court Commission on Access to Justice. Judges retain discretion to determine whether good cause is shown. If the court determines that good cause is not shown, the court shall enter an order to that effect stating the specific reasons for the determination and ordering the litigant to e-file thereafter.

Judges retain discretion to determine whether, under particular circumstances, good cause exists without the filing of a certificate, and the court shall enter an order to that effect.

(d) Timely Filing. Unless a statute, rule, or court order requires that a document be filed by a certain time of day, a document is considered timely if submitted before midnight (in the court's time zone) on or before the date on which the document is due. A document submitted on a day when the clerk's office is not open for business will, unless rejected, be file stamped as filed on the next day the clerk's office is open for business. The filed document shall be endorsed with the clerk's electronic file mark setting forth, at a minimum, the identification of the court, the clerk, the date, and the time of filing.

(1) If a document is untimely due to any court-approved electronic filing system technical failure, the filing party may seek appropriate relief from the court, upon good cause shown.

(2) If a document is rejected by the clerk and is therefore untimely, the filing party may seek appropriate relief from the court, upon good cause shown.

(e) Filer Responsible for Electronic Submissions. The filer is responsible for the accuracy of data entered in an approved electronic filing system and the accuracy of the content of any document submitted for electronic filing. The court and the clerk of court are not required to ensure the accuracy of such data and content.

(f) Effective Date. This rule is effective July 1, 2017 for proceedings in the Supreme Court and the Appellate Court. For proceedings in the circuit court, this rule is effective January 1, 2018.

Adopted June 22, 2017, eff. July 1, 2017; amended Dec. 13, 2017, eff. immediately; amended Dec. 12, 2018, eff. immediately; amended Dec. 19, 2019, eff. Jan. 1, 2020; amended August 14, 2020, eff. immediately; amended Feb. 4, 2022, eff. immediately.

Committee Comments

(December 13, 2017)

(Revised February 4, 2022)

a. The implementation of electronic filing in Illinois courts should not impede a person's access to justice. If courts are unable to meet their obligation due to an emergency situation under M.R. 18368 to provide "designated space, necessary equipment, and technical support for self-represented litigants seeking to e-file documents during regular court hours," that party is exempted from e-filing under Rule 9(c)(5) and permitted to file in person or by mail. An exempted party may also file through other means, such as e-mail, as permitted by the local court.

b. Where a party has filed a Certification for Exemption From E-filing or the court has granted a good-cause exemption *sua sponte*, that party may file documents in person or by mail. That party may also file though other means, such as e-mail, as permitted by the local court. Each court should consider establishing a process allowing exempt self-represented litigants to file documents remotely by e-mail to reduce the number of self-represented litigants traveling to the courthouse for the sole purpose of filing documents.

c. Although a document meets the criteria for an exemption (for example, for good cause shown), any document may be electronically filed if that is the filer's preferred method of filing the court documents.

Rule 10. Size and Specifications of Documents Filed in the Illinois Courts

(a) Page Size. Except as otherwise provided in these rules, the page size of all documents filed in all courts of this State shall be 8½ inches by 11 inches. The court encourages use of recycled paper if the filing is in paper form.

(b) Legibility. Documents filed shall be legibly written, typewritten, printed, or otherwise prepared.

(c) Electronic Specifications. Documents filed electronically must conform to the technical specifications contained in the eFileIL Electronic Document Standards (as published at

http://efile.illinoiscourts.gov).

(d) Rejection. If a document is rejected by the clerk, the party may correct the deficiency identified by the clerk and resubmit the document for filing. If the filing party believes, in good faith, that the deficiency identified by the clerk cannot or should not be corrected, the filing party may seek appropriate relief from the court, upon good cause shown.

Adopted January 5, 1981, effective January 1, 1982; amended June 25, 1990, effective July 1, 1990; amended Oct. 24, 2012, effective Jan. 1, 2013; amended June 22, 2017, eff. July 1, 2017.

Committee Comments

Rule 10 was added in 1981.

Rule 11. Manner of Serving Documents Other Than Process and Complaint on Parties Not in Default in the Trial and Reviewing Courts

(a) On Whom Made. If a party is represented by an attorney of record, service shall be made upon the attorney. Otherwise service shall be made upon the party.

(b) E-mail Address. An attorney must include on the appearance and on all pleadings filed in court an e-mail address to which documents and notices will be served in conformance with Rule 131(d). A self-represented litigant who has an e-mail address must also include the e-mail address on the appearance and on all pleadings filed in court to which documents and notices will be served in conformance with Rule 131(d).

(c) Method. Unless otherwise specified by rule or order of court, documents shall be served electronically.

(1) Electronic service may be made

(i) through an approved electronic filing service provider (EFSP) or

(ii) to the e-mail address(es) identified by the party's appearance in the matter.

If service is made by e-mail, the documents may be transmitted via attachment or by providing a link within the body of the e-mail that will allow the party to download the document.

(2) If a self-represented party does not have an e-mail address, or if service other than electronic service is specified by rule or order of court, or if extraordinary circumstances prevent timely electronic service in a particular instance, service of documents may be made by one of the following alternative methods:

(i) *Personal Service.* Delivering the document to the attorney or party personally;

(ii) *Delivery to Attorney's Office or Self-Represented Party's Residence.* Delivery of the document to an authorized person at the attorney's office or in a reasonable receptacle or location at or within the attorney's office. If a party is not represented by counsel, by leaving the document at the party's residence with a family member of the age of 13 years

or older;

(iii) *United States Mail.* Depositing the document in a United States post office or post office box, enclosed in an envelope to the party's address, as identified by the party's appearance in the matter, with postage fully prepaid; or

(iv) *Third-Party Commercial Carrier.* Delivery of the document through a third-party commercial carrier or courier, to the party's address, as identified by the party's appearance in the matter, with delivery charge fully prepaid.

(d) Multiple Parties or Attorneys. In cases in which there are two or more plaintiffs or defendants who appear by different attorneys, service of all documents shall be made on the attorney for each of the parties. When more than one attorney appears for a party, service upon one of them is sufficient.

(e) Notice of E-mail Rejection. If a party serving a document via e-mail receives a rejection message or similar notification suggesting that transmission was not successful, the party serving the document shall make a good-faith effort to alert the intended recipient of a potential transmission problem and take reasonable steps to ensure actual service of the document.

(f) Limited Scope Appearance. After an attorney files a Notice of Limited Scope Appearance in accordance with Rule 13(c)(6), service of all documents shall be made on both the attorney and the party represented on a limited scope basis until: (1) the court enters an order allowing the attorney to withdraw under Rule 13(c) or (2) the attorney's representation automatically terminates under Rule 13(c)(7)(ii).

Amended April 8, 1980, effective May 15, 1980; amended April 10, 1987, effective August 1, 1987; amended October 30, 1992, effective November 15, 1992; amended December 29, 2009, effective immediately; amended Oct. 24, 2012, effective Jan. 1, 2013; amended Dec. 21, 2012, eff. Jan. 1, 2013; amended June 14, 2013, eff. July 1, 2013; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended June 22, 2017, eff. July 1, 2017; amended July 15, 2020, eff. immediately; amended Jan. 26, 2021, eff. immediately.; amended June 11, 2021, eff. July 1, 2021.

Committee Comment

(July 15, 2020)

When a self-represented litigant has provided an e-mail address to the court pursuant to subparagraph (b), courts retain discretion to determine if an alternative method of service of documents or notices, either in addition to or instead of e-mail, is needed.

(December 9, 2015)

In amending Rule 11 to provide for e-mail service, the Committee considered whether special additional rules should apply to documents served by e-mail, *e.g.*, specified file formats, scan resolutions, electronic file size limitations, etc. The Committee rejected such requirements in favor

of an approach which provides flexibility to adapt to evolving technology and developing practice. The Committee further anticipates good faith cooperation by practitioners. For example, if an attorney serves a motion in a format which cannot be read by the recipient, the Committee expects the recipient to contact the sender to request an alternative electronic format or a paper copy.

Committee Comment

(December 21, 2012)

New subparagraphs (b)(6) and (7) were created to allow for service of documents electronically. The amendments facilitate electronic communications among the court, parties, and counsel and complement the expansion of e-filing in the trial courts. However, electronic service may not be appropriate in all instances. For example, absent a secure method for electronic service of documents, other service options should be used for cases or documents filed confidentially.

Committee Comments

(December 29, 2009)

The rules on service and filing have been revised to provide for sending documents via third-party commercial carrier. Under these rules, the term "delivery" refers to all the carrier's standard pick-up methods, such as dropping a package in a UPS or FedEx box or with a UPS or FedEx contractor.

Rule 12. Proof of Service in the Trial and Reviewing Courts; Effective Date of Service

(a) Filing. When service of a document is required, proof of service shall be filed with the clerk.

(b) Manner of Proof. Service is proved:

(1) in the case of electronic service through the court electronic filing manager or an approved electronic filing service provider, by an automated verification of electronic service, specifying the time of transmission and e-mail address of each recipient;

(2) in the case of service by e-mail, by certification under section 1-109 of the Code of Civil Procedure of the person who initiated the transmission, stating the date of transmission and the e-mail address of each recipient;

(3) by written acknowledgment from the person served;

(4) in case of service by personal, office, or residential delivery, by certification under section 1-109 of the Code of Civil Procedure of the person who made delivery, stating the time and place of delivery;

(5) in case of service by mail or by delivery to a third-party commercial carrier, by certification under section 1-109 of the Code of Civil Procedure of the person who deposited the document in the mail or delivered the document to a third-party commercial carrier or courier, stating the time and place of mailing or delivery, the complete address that appeared on the envelope or package, and the fact that proper postage or the delivery charge was prepaid;

or

(6) in case of service by mail by a self-represented litigant residing in a correctional facility, by certification under section 1-109 of the Code of Civil Procedure of the person who deposited the document in the institutional mail, stating the time and place of deposit and the complete address to which the document was to be delivered.

(c) Effective Date of Service. Service by electronic means or by personal, office, or residential delivery is complete on the day of transmission. Service by delivery to a third-party commercial carrier or courier is complete on the third court day after delivery of the package to the third-party carrier. Service by U.S. mail is complete four days after mailing.

Amended effective July 1, 1971, and July 1, 1975; amended October 30, 1992, effective November 15, 1992; amended December 29, 2009, effective immediately; amended Dec. 21, 2012, eff. Jan. 1, 2013; amended Jan. 4, 2013, eff. immediately; amended September 19, 2014, eff. immediately; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended Oct. 6, 2016, eff. Nov. 1, 2016; amended June 22, 2017, eff. July 1, 2017.

Committee Comments

(December 29, 2009)

The rules on service and filing have been revised to provide for sending documents via third-party commercial carrier. Under these rules, the term "delivery" refers to all the carrier's standard pick-up methods, such as dropping a package in a UPS or FedEx box or with a UPS or FedEx contractor.

Rule 13. Appearances—Time to Plead—Withdrawal

(a) Written Appearances. If a written appearance is filed, copies of the appearance shall be served in the manner required for the service of copies of pleadings.

(b) Time to Plead. A party who appears without having been served with summons is required to plead within the same time as if served with summons on the day he appears.

(c) Appearance and Withdrawal of Attorneys.

(1) *Addressing the Court.* An attorney shall file a written appearance or other pleading before addressing the court unless the attorney is presenting a motion for leave to appear by intervention or otherwise.

(2) *Notice of Withdrawal.* An attorney may not withdraw his or her appearance for a party without leave of court and notice to all parties of record. Unless another attorney is substituted, the attorney must give reasonable notice of the time and place of the presentation of the motion for leave to withdraw, by personal service, certified mail, or a third-party carrier, directed to the party represented at the party's last known business or residence address. Alternatively, the attorney may give such notice electronically, if receipt is acknowledged by the party. Such notice shall advise said party that to insure notice of any action in said cause, the party should

retain other counsel therein or file with the clerk of the court, within 21 days after entry of the order of withdrawal, a supplementary appearance stating therein an address to which service of notices or other documents may be made.

(3) *Motion to Withdraw*. The motion for leave to withdraw shall be in writing and, unless another attorney is substituted, shall state the last known address(es) of the party represented. The motion may be denied by the court if granting the motion would delay the trial of the case, or would otherwise be inequitable.

(4) *Copy to be Served on Party.* If the party does not appear at the time the motion for withdrawal is granted, either in person or by substitute counsel, then, within three days of the entry of the order of withdrawal, the withdrawing attorney shall serve the order upon the party in the manner provided in paragraph (c)(2) of this rule and file proof of service of the order.

(5) *Supplemental Appearance.* Unless another attorney is, at the time of such withdrawal, substituted for the one withdrawing, the party shall file in the case within 21 days after entry of the order of withdrawal a supplementary appearance, stating therein an address at which the service of notices or other documents may be had upon him or her. A self-represented litigant may supply an e-mail address for service, pursuant to Rule 11(b). In the case of the party's failure to file such supplementary appearance, subsequent notices and filings shall be directed to the party at the last known business or residence address.

(6) *Limited Scope Appearance*. An attorney may make a limited scope appearance on behalf of a party in a civil proceeding pursuant to Rule of Professional Conduct 1.2(c) when the attorney has entered into a written agreement with that party to provide limited scope representation. The attorney shall file a Notice of Limited Scope Appearance, prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article I Forms Appendix, identifying each aspect of the proceeding to which the limited scope appearance pertains.

An attorney may file a Notice of Limited Scope Appearance more than once in a case. An attorney must file a new Notice of Limited Scope Appearance before any additional aspect of the proceeding in which the attorney intends to appear. A party shall not be required to pay more than one appearance fee in a case.

(7) *Withdrawal Following Completion of Limited Scope Representation*. Upon completing the representation specified in the Notice of Limited Scope Appearance filed pursuant to paragraph (6), the attorney shall withdraw by oral motion or written notice as provided in parts (i)-(ii) of this paragraph. A withdrawal for any reason other than completion of the representation shall be requested by motion under paragraphs (c)(2) and (c)(3).

(i) If the attorney completes the representation at or before a court hearing attended by the party the attorney represents, the attorney may make an oral motion for withdrawal without prior notice to the party the attorney represents or to other parties. The court must grant the motion unless the party objects on the ground that the attorney has not completed the representation. The order granting the withdrawal may require the attorney to give written notice of the order to parties who were neither present nor represented at the

hearing. If the party objects that the attorney has not completed the representation, the court must hold an evidentiary hearing on the objection, either immediately or on a specified later date. After hearing the evidence, the court must grant the motion to withdraw unless the court expressly finds that the attorney has not completed the representation specified in the Notice of Limited Scope Appearance.

(ii) An attorney also may withdraw by filing a Notice of Withdrawal of Limited Scope Appearance, prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article I Forms Appendix. The attorney must serve the Notice on the party the attorney represents and must also serve it on other counsel of record and other parties not represented by counsel, unless the court by order excuses service on other counsel and other parties. The attorney must also serve the Notice on the judge then presiding over the case. The attorney must file proof of service in compliance with this paragraph. Within 21 days after the service of the Notice, the party may file an Objection to Withdrawal of Limited Scope Appearance, prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article I Forms Appendix. The party must serve the Objection on the attorney and must also serve it on other counsel of record and other parties not represented by counsel unless the court by order excuses service on other counsel and other parties. If no timely Objection is filed, the attorney's limited scope appearance automatically terminates, without entry of a court order when the 21-day period expires. If a timely Objection is filed, however, the attorney must notice a hearing on the Objection. If the ground for the Objection is that the attorney has not completed the representation specified in the Notice of Limited Scope Appearance, the court must hold an evidentiary hearing. After the requisite hearing, the court must enter an order allowing the attorney to withdraw unless the court expressly finds that the attorney has not completed the representation specified in the Notice of Limited Scope Appearance.

Adopted June 15, 1982, effective July 1, 1982; amended February 16, 2011, effective immediately; amended Jan. 4, 2013, eff. immediately; amended June 14, 2013, eff. July 1, 2013; amended June 22, 2017, eff. July 1, 2017.

Committee Comments

(rev. June 14, 2013)

Rule 13 was added in 1982. It was patterned after Proposed Uniform Circuit Court Rule III, which was prepared by a special committee of the Illinois State Bar Association and approved by the ISBA Board of Governors on June 22, 1976. Under paragraph (c) of this rule, an attorney's written appearance on behalf of a client before any court in this State binds the attorney to continue to represent that client in that cause until the court, after notice and motion, grants leave for the attorney to withdraw. See Rule of Professional Conduct 1.16(c).

Committee Comments

(June 14, 2013)

Paragraph (c)(6) addresses the provision of limited scope representation to clients under Rule of Professional Conduct 1.2(c). The paragraph is not intended to regulate or impede appearances made pursuant to other types of limited engagements by attorneys, who may appear and withdraw as otherwise provided by Rule 13.

An attorney making a limited scope appearance in a civil proceeding must first enter into a written agreement with the party disclosing the limited nature of the representation. The limited appearance is then effected by using the form Notice of Limited Scope Appearance appended to this Rule. Utilizing this standardized form promotes consistency in the filing of limited scope appearances, makes the notices easily recognizable to judges and court personnel, and helps ensure that the scope of the representation is identified with specificity.

A party on whose behalf an attorney has filed a Notice of Limited Scope Appearance remains responsible, either personally or through an attorney who represents the party, for all matters not specifically identified in the Notice of Limited Scope Appearance.

Paragraph (c)(6) does not restrict (1) the number of limited scope appearances an attorney may make in a case, (2) the aspects of the case for which an attorney may file a limited scope appearance such as, for example, specified court proceedings, depositions, or settlement negotiations, or (3) the purposes for which an attorney may file a limited scope appearance. Notwithstanding the absence of numeric or subject matter restrictions on filing limited scope appearances, nothing in the Rule restricts the ability of a court to manage the cases before it, including taking appropriate action in response to client or lawyer abuse of the limited scope representation procedures.

Paragraph (c)(7) provides two alternative ways for an attorney to withdraw when the representation specified in the Notice of Limited Scope Appearance has been completed. The first method—an oral motion—can be used whenever the representation is completed at or before a hearing attended by the party the attorney represents. Prior notice of such a hearing is not required. The attorney should use this method whenever possible, because its use ensures that withdrawal occurs as soon as possible and that the court knows of the withdrawal.

The second method—filing a Notice of Withdrawal of Limited Scope Appearance—enables the attorney to withdraw easily in other situations, without having to make a court appearance, except when there is a genuine dispute about the attorney's completion of the representation. The Notice must be served on the party represented and on other counsel of record and other parties not represented by counsel unless the court excuses service on other counsel of record and other parties not represented by counsel. The Notice must also be served on the judge then presiding over the case to ensure that the judge is made aware that the limited scope representation has been completed, subject to the client's right to object. The attorney's withdrawal is automatic, without entry of a court order, unless the client files a timely Objection to Withdrawal of Limited Scope Appearance.

If the attorney makes an oral motion to withdraw pursuant to paragraph (c)(7)(i), with or

without client objection, or if the client files a timely Objection to Withdrawal of Limited Scope Appearance pursuant to paragraph (c)(7)(ii), the court must allow the attorney to withdraw unless the court expressly finds that the attorney has not completed the representation specified in the Notice of Limited Scope Appearance. An evidentiary hearing is required if the client objects to the attorney's withdrawal based on the attorney's failure to complete the representation. A nonevidentiary hearing is required if the client objects on a ground other than the attorney's failure to complete the representation, although the primary function of such a hearing is to explain to the client that such an objection is not well-founded. A court's refusal to permit withdrawal of a completed limited scope representation, or even its encouragement of the attorney to extend the representation, would disserve the interests of justice by discouraging attorneys from undertaking limited scope representations out of concern that agreements with clients for such representations would not be enforced.

A limited scope appearance under the rule is unrelated to "special and limited" appearances formerly used to object to the lack of personal jurisdiction. The use of such appearances ended with the adoption of Public Act 91-145, which amended section 2-301 of the Code of Civil Procedure (735 ILCS 5/2-301) effective January 1, 2000.

Rule 14. Text Message Notification Programs.

(a) Any court or clerk of court may implement a text message notification program(s). Any text message notification program developed within a judicial circuit shall be approved by the chief circuit judge prior to implementation.

(1) The court implementing the program shall have the discretion to determine the content and scope of the text message notification program. A text message notification program may include, without limitation, notifications and reminders regarding court, mediation, and arbitration dates; probation-related events; court-required appointments, events, deadlines, and activities; new court filings; and general court announcements.

(2) The court implementing the program shall have the discretion to determine who may participate in the text message notification program(s) but shall not unlawfully discriminate in the use of that discretion.

(3) Text message notification programs shall afford participants the ability to opt out of the program at any time.

(b) Courts and clerks of the court are authorized to collect the mobile telephone information belonging to a person, including but not limited to telephone number and carrier, for the sole purpose of inclusion of that person in a text message notification program.

(1) A court or clerk of court may collect such mobile telephone information in anticipation of the implementation of a text message notification program in that jurisdiction even if no program currently exists.

(2) Mobile telephone information provided and collected for the purpose of inclusion in a text message notification program under this Rule shall not be made part of the official public

court record, shall be kept confidential, and shall not be utilized or disclosed for any other purpose.

(c) Unless otherwise indicated in Supreme Court Rule or statute, a text message notification program is a supplement and not a substitute for any notification required by Supreme Court Rule or statute.

(d) Failure to participate in or receipt of a notification pursuant to a text messaging program under this Rule shall not be considered or used as evidence against the person in any court proceeding including but not limited to default proceedings, criminal proceedings, and contempt proceedings.

(e) Courts may adopt local rules for text message notification programs that are consistent with this Rule.

Adopted Dec. 9, 2020, eff. immediately.

Committee Comments
(December 9, 2020)

This Rule recognizes the prevalence of and reliance on mobile phones by the public and encourages the implementation of text message reminders and notifications in the court system. Some jurisdictions have already implemented such programs with success. Such programs can decrease the number of failures to appear in court or at court-required activities and appointments such as probation appointments. This in turn reduces the number of pretrial detentions and probation violations in criminal cases and contributes to the efficient adjudication of all cases. Text messaging programs can also be utilized to make general court announcements and emergency announcements such as court closures. While jurisdictions have the discretion to decide who may participate in text message notification programs, this Rule does not limit text message notification programs to parties and counsel of record. These programs may allow, for example, the media and members of the public to also opt into the text message notification program. The purpose of paragraph (c) is to clarify that this Rule does not supersede or serve as satisfaction of any notification requirements required under other Illinois Supreme Court Rules or statutes. The purpose of paragraph (d) is to encourage participation in these programs by prohibiting participation in the program from being used against a person in court proceedings and to ensure nonparticipation in the program is not used against a person who may have a valid reason for not participating, such as not owning a cellular telephone.

Rule 15. Social Security Numbers in Pleadings and Related Matters.

(a) Applicability. This rule applies to all documents filed with the court in all cases except civil cases. The confidential treatment of an individual's Social Security number in civil case court filings is separately provided for in Rule 138.

(b) Unless otherwise required by law or ordered by the court, parties shall not include Social Security numbers in documents filed with the court, including exhibits thereto, whether filed

electronically or in paper. If disclosure of an individual's Social Security number is required for a particular filing, only the last four digits of that number shall be used. The filing must be accompanied by a Notice of Confidential Information Within Court Filing, prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article I Forms Appendix, which shall identify the full Social Security number and shall remain confidential, except as to the parties or as the court may direct.

(c) Neither the court, nor the clerk, will review each pleading for compliance with this rule. If a pleading is filed without redaction, a party or identified person may move the court to order redaction. If the court finds the inclusion of the Social Security number was willful, the court may award the prevailing party reasonable expenses, including attorney fees and court costs, incurred in making or opposing the motion.

(d) This rule does not require any party, attorney, clerk or judicial officer to redact information from a court record that was filed prior to the adoption of this rule; provided, however, that a party may request that a Social Security number be redacted in a matter that preceded the adoption of this rule.

Adopted October 4, 2011, effective January 1, 2012; renumbered April 26, 2012, eff. immediately; amended Dec. 24, 2013, eff. Jan. 1, 2014; amended June 22, 2017, eff. July 1, 2017.

Committee Comment

(October 4, 2011)

This rule was adopted pursuant to section 40 of the Identity Protection Act (5 ILCS 179/40 (West 2010)).

Rule 16. Certification Instead of Notarization

Any affidavit filed under oath in any court of this State may be made by certification set forth in section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109).

Adopted June 26, 2018, eff. July 1, 2018.

Rule 17. Reserved

Rule 18. Findings of Unconstitutionality

A court shall not find unconstitutional a statute, ordinance, regulation or other law, unless:

(a) the court makes the finding in a written order or opinion, or in an oral statement on the record that is transcribed;

(b) such order or opinion clearly identifies what portion(s) of the statute, ordinance, regulation or other law is being held unconstitutional;

(c) such order or opinion clearly sets forth the specific ground(s) for the finding of unconstitutionality, including:

(1) the constitutional provision(s) upon which the finding of unconstitutionality is based;

(2) whether the statute, ordinance, regulation or other law is being found unconstitutional on its face, as applied to the case *sub judice*, or both;

(3) that the statute, ordinance, regulation or other law being held unconstitutional cannot reasonably be construed in a manner that would preserve its validity;

(4) that the finding of unconstitutionality is necessary to the decision or judgment rendered, and that such decision or judgment cannot rest upon an alternative ground; and

(5) that the notice required by Rule 19 has been served, and that those served with such notice have been given adequate time and opportunity under the circumstances to defend the statute, ordinance, regulation or other law challenged.

Adopted July 27, 2006, effective September 1, 2006.

Committee Comment

(July 27, 2006)

This rule is intended to implement the principles encapsulated in *People v. Cornelius*, 213 Ill. 2d 178 (2004), and *In re Parentage of John M.*, 212 Ill. 2d 253 (2004), concerning the duties incumbent upon the circuit court when declaring state statutes to be unconstitutional.

Rule 19. Notice of Claim of Unconstitutionality or Preemption by Federal Law

(a) Notice Required. In any cause or proceeding in which the constitutionality or preemption by federal law of a statute, ordinance, administrative regulation, or other law affecting the public interest is raised, and to which action or proceeding the State or the political subdivision, agency, or officer affected is not already a party, the litigant raising the constitutional or preemption issue shall serve an appropriate notice thereof on the Attorney General, State's Attorney, municipal counsel or agency attorney, as the case may be.

(b) Contents and Time for Filing Notice. The notice shall identify the particular statute, ordinance, regulation, or other law, and shall briefly describe the nature of the constitutional or preemption challenge. The notice shall be served at the time of suit, answer or counterclaim, if the challenge is raised at that level, or promptly after the constitutional or preemption question arises as a result of a circuit or reviewing court ruling or judgment.

(c) Purpose of Notice. The purpose of such notice shall be to afford the State, political subdivision, agency or officer, as the case may be, the opportunity, but not the obligation, to intervene in the cause or proceeding for the purpose of defending the law or regulation challenged. The election to intervene shall be subject to applicable provisions of law governing intervention or impleading of interested parties.

Adopted February 21, 1986, effective August 1, 1986; amended July 27, 2006, effective September 1, 2006.

Rule 20. Certification of Questions of State Law From Certain Federal Courts

(a) Certification. When it shall appear to the Supreme Court of the United States, or to the United States Court of Appeals for the Seventh Circuit, that there are involved in any proceeding before it questions as to the law of this State, which may be determinative of the said cause, and there are no controlling precedents in the decisions of this court, such court may certify such questions of the laws of this State to this court for instructions concerning such questions of State law, which certificate this court, by written opinion, may answer.

(b) Contents of Certification Order. A certification order shall contain:

(1) the questions of law to be answered; and

(2) a statement of all facts relevant to the questions certified and showing fully the nature of the controversy in which the questions arose.

(c) Record Before Certifying Court. This court may require the original or copies of all or of any portion of the record before the certifying court to be filed with it, if, in the opinion of this court, the record or a portion thereof may be necessary in answering the questions.

(d) Briefs and Argument. Proceedings in this court shall be those provided in these rules governing briefs and oral arguments, except that the time for filing briefs specified in Rule 343 begins to run from the day this court agrees to answer the certified question of law, and the parties retain the same designation as they have in the certifying court.

(e) Costs of Certification. Fees and costs shall be the same as in civil appeals docketed before this court and shall be equally divided between the parties unless otherwise ordered by the certifying court.

Adopted August 30, 1983, effective October 1, 1983; amended April 1, 1992, effective August 1, 1992.

Committee Comments

This rule permits the Supreme Court of the United States or the United States Court of Appeals for the Seventh Circuit to certify a question of Illinois law to the Supreme Court of Illinois, which question may be controlling in an action pending before said court and upon which no controlling Illinois authority exists.

The Court of Appeals for the Seventh Circuit has a rule which encourages certification in jurisdictions that have a rule similar to the one provided herein. See Rule 13 of the Rules of the United States Court of Appeals for the Seventh Circuit.

Subparagraph (a) establishes the standard for certification and also makes the acceptance of certification by the Supreme Court of Illinois discretionary.

Subparagraph (b) establishes the contents of a certification order.

Subparagraph (c) provides that the Supreme Court of Illinois may require the original or copies of all or any portions of the record before the certifying court.

Subparagraph (d) provides that briefs and arguments are to be governed by the Supreme Court of Illinois rules dealing with briefs and oral arguments. Amended in 1992 to provide that the time schedule for briefs will not begin to run until the court decides that it will answer the certified question.

Subparagraph (e) of the rule provides for fees and costs in the Supreme Court of Illinois.

Rule 21. Circuit Court Rules and Filing of Rules; Administrative Authority; General Orders;

(a) Circuit Court Rules. A majority of the circuit judges in each circuit may adopt rules governing civil and criminal cases, including remote appearances, which are consistent with these rules and the statutes of the State, and which, so far as practicable, shall be uniform throughout the State. All rules of court shall be filed with the Administrative Director within 10 days after they are adopted.

(b) Administrative Authority. Subject to the overall authority of the Supreme Court, the chief circuit judge shall have the authority, among other things, to determine the hours of court and of the judges in the circuit, the available leave time to which a judge is entitled, and, when the judge's conduct negatively affects the operations of the court or public confidence in the court, to direct how that judge must conduct himself or herself. In the exercise of this general administrative authority, the chief judge shall take or initiate appropriate measures to address the persistent failure of any judge to perform his or her judicial duties or to comply with a directive from the chief judge.

(c) Voluntary Program to Address Certain Types of Judicial Conduct. In accordance with paragraph (b) and the chief judge's responsibilities under Supreme Court Rule 63B(3), the measures available to a chief judge to address the persistent failure of any judge to perform his or her judicial duties or to comply with a directive from the chief judge may include participation by the judge in a voluntary program under this paragraph (c) if the chief judge concludes that (i) participation in the program will help the judge address the conduct in question; (ii) use of that measure will benefit and not harm the public, the courts, and the administration of justice; and (iii) the judge's conduct does not involve dishonesty, fraud, deceit, or misrepresentation.

(1) A voluntary program under paragraph (c) shall require the judge to complete one or more of the following activities:

(A) a mentoring program;

(B) attendance at the judicial training program;

(C) testing, evaluation, and/or treatment by the Lawyers' Assistance Program or a provider of medical and psychological services; and

(D) any other requirement agreeable to the chief judge and the judge.

(2) The terms of the voluntary program shall be set forth in a written agreement between the chief judge and the judge. The agreement shall specify the purpose of the program, the requirements of the program, the deadline by which the requirements shall be completed, and

any responsibility of the judge for payment of costs.

(3) If the judge fails to comply with the requirements of the agreement and the conduct that prompted the agreement has persisted, the chief judge shall take or initiate appropriate measures under paragraphs (b) and (d).

(4) If the judge refuses to enter into a proposed voluntary agreement, the chief judge shall take or initiate other appropriate measures under paragraph (b).

(d) Supreme Court Notice. The chief judge shall notify the Supreme Court if, despite the measures taken by the chief judge pursuant to paragraphs (b) or (c), a judge continues to fail to perform his or her judicial duties or to comply with a directive from the chief judge following the later of at least 30 days or the deadline for completion of a program pursuant to paragraph (c).

(e) General Orders. The chief judge of each circuit may enter general orders in the exercise of his or her general administrative authority, including orders (i) providing for assignment of judges, general or specialized divisions, and times and places of holding court and (ii) specifying the nature of any needed court-related personnel, facilities, or resources.

(f) Proceedings to Compel Compliance With Certain Orders Entered by a Chief Circuit Judge. Any proceeding to compel a person or agency other than personnel of the circuit court to comply with an order of the chief circuit judge pursuant to paragraph (e) shall be commenced by filing a complaint and summons and shall be tried without a jury by a judge from a circuit other than the circuit in which the complaint was filed. The proceedings shall be conducted as in other civil cases.

Amended August 9, 1983, effective October 1, 1983; amended December 1, 2008, effective immediately; amended Nov. 24, 2020, eff. Jan. 1, 2021; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Committee Comments

(Revised Jan. 1, 2021)

This rule includes paragraphs (2), (3), and (4) of former Rule 1, which was revised effective January 1, 1964.

Paragraph (b) clarifies that a chief circuit judge's administrative role includes the authority, and the responsibility, to address the persistent failure of any judge to perform his or her judicial duties. Such failure may be due to, among other things, professional incompetence, poor case load management, or chronic absenteeism. The chief judge also has authority to direct how a judge must conduct himself or herself if the judge's conduct negatively affects the operations of the court or public confidence in the court. The chief circuit judge shall take or initiate appropriate measures if a judge persistently fails to perform his or her judicial duties or comply with a directive from the chief judge. Depending on the circumstances, "appropriate measures" may include, among other things, reassignment of the judge to administrative or other judicial duties, the provision of counseling, the assignment of a mentor, or referral to the Judicial Inquiry Board.

Paragraph (c) is new. Modeled on the diversion program for lawyers developed by the Attorney

Registration and Disciplinary Commission, it authorizes a chief judge to address certain conduct by a judge that requires the chief judge to "take or initiate appropriate disciplinary measures" under paragraph (b) by affording the judge an opportunity to enter into a voluntary agreement intended to help the judge correct or terminate the conduct in question. Depending on the nature of the chief judge's obligation to "take or initiate appropriate disciplinary measures" under Supreme Court Rule 63B(3), it is anticipated that in most instances a voluntary agreement that results in the desired change to the judge's conduct will obviate any need for the chief judge to refer the judge to the Judicial Inquiry Board. In situations where a chief judge is required by Rule 63B(3) to refer the judge to the Judicial Inquiry Board, a voluntary agreement will not eliminate that obligation. See Illinois Judicial Ethics Committee Opinion No. 2003-04 (addressing a judge's ethical responsibility to "take or initiate appropriate disciplinary measures" with respect to a judge or lawyer's violation of the applicable ethics rules).

Paragraph (d) is also new. It provides for notice to the Supreme Court if measures taken by a chief judge to address a judge's persistent failure to perform his or her judicial duties or to comply with a directive from the chief judge do not result in improvement in the judge's behavior within 30 days or following completion of a voluntary program under paragraph (c).

Paragraph (e) has been revised to authorize the chief judge to issue orders specifying the nature of any needed court-related personnel, facilities, or resources. If deemed necessary by the chief judge, noncompliance with any such order can be addressed in a proceeding pursuant to paragraph (f), with a determination of the enforceability of the order requiring due regard for separation of powers and other relevant considerations. See *Knuepfer v. Fawell*, 96 Ill.2d 284 (1983) (addressing authority of chief judge to exercise the inherent power of the courts to require production of facilities, personnel, and resources reasonably necessary to enable the performance of judicial functions with efficiency, independence, and dignity).

Rule 22. Appellate Court Organization; Administrative Authority; Appellate Court Rules

(a) Divisions-Appellate Districts.

(1) Each district of the Appellate Court shall consist of one division unless the Supreme Court provides otherwise by order. The First District shall sit in the city of Chicago. The Second District shall sit in the city of Elgin. The Third District shall sit in the city of Ottawa. The Fourth District shall sit in the city of Springfield. The Fifth District shall sit in the city of Mount Vernon. With the approval of the chief justice of the Supreme Court, a division may sit at any place in the State. The Appellate Court in each district shall be in session throughout the year, and each division shall sit periodically as its judicial business requires. Each division shall sit in panels of three judges as hereinafter provided.

(2) Oral arguments in the appellate court will normally be held in the courthouse provided for that purpose in the appropriate city designated in subparagraph (a)(1). However, with the approval of all the parties and the chief justice, a panel of the appellate court may, on occasion, agree to set an oral argument to be held in a suitable, alternative location but outside the courthouse in which the panel would otherwise normally preside.

(b) Assignment to Divisions-Designation of Panels. The Supreme Court shall assign judges

to the various divisions. The presiding judge of a division shall designate judges serving in that division to sit in panels of three. Such a three-judge panel shall constitute the division for purposes of rendering a decision in a case. The Executive Committee of the First District, upon request of a division of that district, may designate any Appellate Court judge of that district to sit in the place of a judge of the requesting division for such case or cases as may be designated in the request.

(c) Decisions. Three judges must participate in the decision of every case, and the concurrence of two shall be necessary to a decision. One judge may decide motions of course.

(d) Divisions—Presiding Judge. The judges of each division shall select one of their number to serve as presiding judge of that division for a term of one year.

(e) Executive Committee of the Appellate Court of Illinois. The presiding judges of the Second, Third, Fourth, and Fifth Districts and the members of the Executive Committee of the First District shall constitute the Executive Committee of the Appellate Court of Illinois. Meetings of the executive committee may be called by any three of its members, and meetings of the Appellate Court may be called by the executive committee.

(f) Executive Committee of the Appellate Court in the First Appellate District. There shall be an Executive Committee of the First District composed of one member of each division, which committee shall exercise general administrative authority. The executive committee shall select one of its number as chairman.

(g) Administrative Authority. Subject to the overall authority of the Supreme Court, the presiding judge of each district, and the chairman of the Executive Committee in the First District, shall have the authority to determine, among other things, the hours of court, available leave time to which a judge is entitled, and to instruct the way in which a judge on the bench is expected to behave. In the exercise of this general administrative authority, the presiding judge of each judicial district and the chairman of the Executive Committee in the First District shall take or initiate appropriate measures to address the persistent failure of any judge to perform his or her judicial duties.

(h) Appellate Court Rules. A majority of the appellate court judges in each district may adopt rules governing civil and criminal cases which are consistent with these rules and the statutes of the state, and which, so far as practicable, shall be uniform throughout the state. All rules of court shall be filed with the Administrative Director within 10 days after they are adopted.

(i) Workers' Compensation Commission Appeals. A five-judge panel of the Appellate Court will sit as the Workers' Compensation Commission division of each district of the Appellate Court. The Workers' Compensation Commission division will hear and decide all appeals involving proceedings to review orders of the Workers' Compensation Commission. The division will sit, periodically, as its judicial business requires, at any place in the State it chooses. Five judges must participate in the decisions of the Workers' Compensation Commission division, and the concurrence of three shall be necessary to a decision. If a judge designated to serve on this panel cannot participate, the alternate designated by the Supreme Court shall participate. Motions of course may be decided by one judge.

Amended effective July 1, 1971, and December 9, 1974; amended July 30, 1979, effective October 15, 1979; amended February 1, 1984, effective February 1, 1984, with Justice Moran dissenting (see *Yellow Cab Co. v. Jones* (1985), 108 Ill. 2d 330, 342); amended April 10, 1987, effective August 1, 1987; amended November 20, 1991, effective immediately; amended October 15, 2004, effective January 1, 2005; amended May 23, 2005, effective immediately; amended December 1, 2008, effective immediately; amended June 22, 2017, eff. July 1, 2017.

Committee Comments

(December 1, 2008)

New paragraph (g) was adopted December 1, 2008, to clarify that a presiding judge's administrative role includes the authority, and the responsibility, to address the persistent failure of any judge to perform his or her judicial duties. Such failure may be due to, among other things, professional incompetence, poor case load management, or chronic absenteeism. Depending on the facts involved, the expectation is that the presiding judge will take or initiate appropriate action to remedy the situation. It shall be the duty of the presiding judge to provide counseling, if deemed necessary and appropriate, and to report violations of the Canons to the Judicial Inquiry Board. In circumstances where there is uncertainty as to whether the conduct at issue is violative of the Canons, the presiding judge shall report the conduct, with substantial particularity, to the Supreme Court.

(Revised February 1, 1984)

As originally adopted, Rule 22 was derived from former Rule 56-2, effective January 1, 1964, and modified June 24, 1965, without change in substance.

Paragraph (a)

As originally adopted, paragraph (a) provided that the Appellate Court should sit in divisions and specified the number of divisions in each of the five districts, four in the First, and one in each of the other districts. It was amended in 1971 to reflect the creation of a fifth division in the First District, and again in 1974, to authorize the creation of a second division in the Second District.

In 1979, the paragraph was amended. Under the paragraph, as amended, each district constitutes a single division unless the Supreme Court provides otherwise by order. A division may consist of four, five, or six judges. Cases are assigned to panels of three judges. The concurrence of two is necessary for a decision.

Paragraph (b)

In 1979, paragraph (b) was amended to permit the presiding judges to designate judges within their division to sit in panels. The authority of the Executive Committee of the First District to make designations on request of a division was retained.

Paragraph (c)

Paragraph (c) provides that three judges must participate in the decision of every case, and that two shall be necessary to a decision, other than a ruling on a motion of course. The 1979 amendments to the rule made no change in paragraph (c). Thus, though a division may consist of more than three judges, it sits in panels of three.

Paragraph (d)

The 1979 amendment retained the one-year term for the presiding judges, but eliminated the provision in the pre-1979 text requiring that the position of presiding judge be rotated among the judges of the division.

Paragraph (e)

Until 1979, paragraph (e) provided that the presiding judge of each division should be a member of the Executive Committee of the Appellate Court of Illinois. In that year it was amended to provide that the presiding judges of the Second, Third, Fourth, and Fifth Districts, together with the members of the Executive Committee of the Appellate Court in the First Appellate District, shall constitute the Executive Committee of the Appellate Court of Illinois. The 1979 amendment makes some change in the First District representation on the Executive Committee, since the members of the Executive Committee of the Appellate Court in the First Appellate District are not necessarily the presiding judges of the divisions of the First District.

Paragraph (f)

Paragraph (f) was amended in 1979 to reflect the deletion from paragraph (a) of the specific provision setting out the number of divisions in each district. There was no change in substance.

Paragraph (g)

Paragraph (g) was added in 1984 to provide for the creation of the Industrial Commission division of the Appellate Court. A single panel of five appellate judges, one from each district (or alternates designated by the Supreme Court), will hear and decide all cases involving proceedings to review orders of the Industrial Commission. The procedure was adopted to relieve the Supreme Court of the growing burden of hearing all such appeals (see amended Rule 302(a)), and to insure that such appeals will continue to enjoy the traditional benefits of speedy consideration and uniform application of the law, the need for which was considered the original justification for giving such cases preferred status in the first place.

Notices of appeal from trial court orders disposing of cases involving review of Industrial Commission orders will be filed in the circuit court in accordance with Rule 303, and copies thereof will be sent to the clerk of the Appellate Court, as required in Rule 303(a)(4).

Rule 23. Disposition of Cases in the Appellate Court

The decision of the Appellate Court may be expressed in one of the following forms: a full opinion, a concise written order, or a summary order conforming to the provisions of this rule. All dispositive opinions and orders shall contain the names of the judges who rendered the opinion or order.

(a) Opinions. A case may be disposed of by an opinion only when a majority of the panel deciding the case determines that at least one of the following criteria is satisfied:

(1) the decision establishes a new rule of law or modifies, explains or criticizes an existing rule of law; or

(2) the decision resolves, creates, or avoids an apparent conflict of authority within the Appellate Court.

(b) Written Order. Cases which do not qualify for disposition by opinion may be disposed of by a concise written order which shall succinctly state:

(1) in a separate introductory paragraph, a concise syllabus of the court's holding(s) in the case;

(2) the germane facts;

(3) the issues and contentions of the parties when appropriate;

(4) the reasons for the decision; and

(5) the judgment of the court.

(c) Summary Order. In any case in which the panel unanimously determines that any one or more of the following dispositive circumstances exist, the decision of the court may be made by summary order. A summary order may be utilized when:

(1) the Appellate Court lacks jurisdiction;

(2) the disposition is clearly controlled by case law precedent, statute, or rules of court;

(3) the appeal is moot;

(4) the issues involve no more than an application of well-settled rules to recurring fact situations;

(5) the opinion or findings of fact and conclusions of law of the trial court or agency adequately explain the decision;

(6) no error of law appears on the record;

(7) the trial court or agency did not abuse its discretion; or

(8) the record does not demonstrate that the decision of the trier of fact is against the manifest weight of the evidence.

When a summary order is issued it shall contain:

(i) a statement describing the nature of the case and the dispositive issues without a discussion of the facts;

(ii) a citation to controlling precedent, if any; and

(iii) the judgment of the court and a citation to one or more of the criteria under this rule

which supports the judgment, *e.g.*, "Affirmed in accordance with Supreme Court Rule 23(c)(1)."

The court may dispose of a case by summary order at any time after the case is docketed in the Appellate Court. The disposition may provide for dismissal, affirmance, remand, reversal or any combination thereof as appropriate to the case. A summary order may be entered after a dispositive issue has been fully briefed, or if the issue has been raised by motion of a party or by the court, *sua sponte,* after expiration of the time for filing a response to the motion or rule to show cause issued by the court.

(d) Captions. All opinions and orders entered under this rule shall bear a caption substantially conforming to the requirements of Rule 330. Additionally, an opinion or order entered under subpart (a) or (b) of this rule must clearly show the date of filing on its initial page.

(e) Effect of Orders.

(1) An order entered under subpart (b) or (c) of this rule is not precedential except to support contentions of double jeopardy, *res judicata*, collateral estoppel or law of the case. However, a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. When cited, a copy of the order shall be furnished to all other counsel and the court.

(2) An order entered under subpart (b) of this rule must contain on its first page a notice in substantially the following form:

> **NOTICE:** This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

(f) Motions to Publish. If an appeal is disposed of by order, any party may move to have the order published as an opinion. The motion shall set forth the reasons why the order satisfies the criteria for disposition as an opinion and shall be filed within 21 days of the entry of the order. The appellate court shall retain jurisdiction to grant or deny a timely filed motion to publish irrespective of the filing of a petition for leave to appeal under Rule 315 and shall rule on the motion to publish within 14 days of its filing, prior to disposition by the Supreme Court of any petition for leave to appeal.

(g) Electronic Publication. In order to make available to the public all opinions and orders entered under subparts (a) and (b) of this rule, the clerks of the Appellate Court shall transmit an electronic copy of each opinion or order filed in his or her district to the webmaster of the Illinois Supreme and Appellate Courts' Web site on the day of filing. No opinion or order may be posted to the Web site that does not substantially comply with the Style Manual for the Supreme and Appellate Courts.

(h) Public-Domain Case Designators

An opinion or order entered under subpart (a) or (b) of this rule must be assigned a public-domain case designator and internal paragraph numbers, as set forth in the accompanying administrative order.

Effective January 31, 1972; amended effective July 1, 1975; amended February 19, 1982, effective April 1, 1982; amended May 18, 1988, effective August 1, 1988; amended November 21, 1988, effective January 1, 1989; amended and Commentary and Administrative Order adopted June 27, 1994, effective July 1, 1994; amended May 30, 2008, effective immediately; amended September 13, 2010, effective January 1, 2011; amended May 31, 2011, effective July 1, 2011; amended Mar. 21, 2018, eff. Apr. 1, 2018; amended Nov. 20, 2020, eff. Jan. 1, 2021.

Committee Comment
(January 1, 2021)

Rule 23(e), in its prior form, mandated that case dispositions under Rule 23(b) were "not precedential and may not be cited by any party except to support contentions of double jeopardy, res judicata, collateral estoppel or law of the case." That provision of the rule was enacted in 1994. At that time, there was an "avalanche of opinions" from our appellate court (see comments of Chief Justice Bilandic), and many were simply "too long" (see comments of Justice Heiple).

In 1994, electronic legal research databases were in their relative infant stages, and the majority of legal research was done using books. Today, book-based legal research has rapidly diminished, and with it, the justifications for the prior version of Rule 23(e) have diminished. Text-searchable electronic legal research databases typically include both published opinions and Rule 23(b) orders. The amended rule makes these cases available to litigants for persuasion without expanding the body of binding precedent.

M.R. No. 10343
(Amended November 21, 2017)
(October 4, 2011)

Under the general administrative and supervisory authority granted the Illinois Supreme Court over the courts of this state (Ill. Const. 1970, art. VI, §16), the order entered under Supreme Court Rule 23, dated May 31, 2011, is amended as follows:

(A) Assignment of Public-Domain Case Designators

The Districts of the Illinois Appellate Court shall assign a public-domain case designator to those opinions filed on or after July 1, 2011. This designator number for an opinion must be unique to that opinion and shall include the year of decision, the court abbreviation, and an identifier number comprised of the final six digits of the docket number, or the final six digits of the initial docket number in a consolidated appeal, without use of the hyphen. In the case of opinions by the Workers' Compensation Commission Division of the Appellate Court, the letters "WC" shall be added as a suffix. The public-domain identifier shall appear at top of the first page of an opinion

and shall be in the following form:

[year] IL App (1st) [no.]
[year] IL App (2d) [no.]
[year] IL App (3d) [no.]
[year] IL App (4th) [no.]
[year] IL App (5th) [no.]
Workers' Compensation Commission Division
2011 IL App ([dist.]) [no.]WC

By way of example, should the First District file an opinion in cause No. 1-10-1234 in 2011, the public-domain case designator will be "2011 IL App (1st) 101234."

Where a second opinion is filed under the same docket number after remand, a capital letter "B" will be appended to the case-designator number, regardless of the year-designator portion of the citation:

2011 IL App (1st) 101159
2012 IL App (1st) 101159-B

Any further opinions arising from the same appeal shall be assigned an alphabetic letter consecutive to the preceding opinion.

However, where an opinion is withdrawn while jurisdiction has been retained by the issuing court, the new opinion or order in the matter shall be given the same case-designator number as the withdrawn opinion without the addition of a sequential alphabetic designator.

Orders filed under Illinois Supreme Court Rule 23(b) shall have the letter "U," preceded by a hyphen, appended to the case-designator number:

2011 IL App (5th) 101160-U

A subsequently filed unpublished order in the same cause of action will result in use of both a "U" and an alphabetic designator:

2011 IL App (5th) 101160-UB

Use of the "U" designator for unpublished decisions and use of an alphabetic designator ("B," "C," *etc*.) for a subsequent opinion or order are independent elements of the case-designator number:

2011 IL App (5th) 101160-U [unpublished; initial decision]
2011 IL App (5th) 101160-B [published; decision after remand]
2011 IL App (5th) 101160-UC [unpublished; decision after second remand]

Should an unpublished order under Supreme Court Rule 23 be converted to a published opinion, the "U" designation shall be deleted.

(B) Internal Paragraphing of Opinions

Illinois reviewing court opinions shall include internally numbered paragraphs as directed below. Use of internal paragraph numbers allows a pinpoint citation to the appropriate portions of an opinion when cited for a specific proposition. Such a citation will include the case name, the public-domain designator number, and the specific, or pinpoint, paragraph or paragraph numbers within the opinion:

People v. Doe, 2011 IL App (1st) 101157, ¶ 15

People v. Doe, 2011 IL App (1st) 101157, ¶¶ 21-23

People v. Doe, 2011 IL App (1st) 101157, ¶¶ 57, 68

Except for the materials denoted in paragraph below, each paragraph of text is to be numbered consecutively beginning after the heading "OPINION" or "ORDER" (including the lead-in line to a separate opinion and any joiner lines thereto).

(2) The numbering of paragraphs within a separate opinion shall be consecutive to the final paragraph number of the opinion that precedes it, beginning with the lead-in line to the separate opinion, as shown in the example below:

¶ 43 CONCLUSION
¶ 44 For the reason stated, the judgment of the circuit court is reversed and the cause is remanded to that court for further proceedings.

¶ 45 Judgment reversed;
¶ 46 cause remanded.

¶ 47 JUSTICE DOE, dissenting:
¶ 48 Because I believe the circuit court correctly resolved the issues presented in the motion to suppress, I would affirm.

The following portions of an opinion do not constitute new paragraphs and shall not be numbered:

(a) indented (blocked) text, regardless of the nature material (*e.g.*, quotation, listing of issues, *etc.*) or the length of the material;

(b) text immediately following indented text, unless such text begins a new paragraph;

(c) text within footnotes;

(d) appendices or other attachments.

If quoted text, including indented quotations, is derived from a source that uses numbered paragraphs under a public-domain system of citation, the numbers from the original source shall not be shown in the quoted material but in the citation only.

If a supplemental document is filed, the paragraph numbering in the original document shall

be continued into the supplemental document, including any lead-in lines and document headings (*e.g.*, "Supplemental Opinion"; "Dissent Upon Denial of Rehearing").

Each paragraph number shall be shown using the paragraph symbol, followed by a space, and then the number (*e.g.*, ¶ 1). The paragraph number is placed at the left margin, followed by a tab that indents the paragraphed text, as follows:

> ¶ 23 The appellate court found that *Grant* supported its conclusion that the designation of the NAF in the agreement to arbitrate was integral to the agreement. Specifically, citing *Grant*, the court noted:
>
> > "[The NAF] has a very specific set of rules and procedures that has implications for every aspect of the arbitration process."
>
> Thus the court found that section 5 of the Arbitration Act could not be used to reform the arbitration provision.
>
> ¶ 24 The defendant argues that the appellate court erroneously determined there is a split in federal case law as to the proper application of section 5 of the Act.

M.R. 10343

IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS

Order entered December 18, 2006.

***In re* Administrative Order No. M.R. 10343**

On the court's own motion, effective January 1, 2007, the administrative order entered in M.R. No. 10343, on June 27, 1994, is hereby vacated.

Order entered by the Court.

Commentary
(June 27, 1994)

By this amendment, Rule 23 creates a presumption against disposing of Appellate Court cases by full, published opinions and authorizes a third type of disposition by summary order in select circumstances. The concept of the traditional "Rule 23 order" remains, but conciseness is encouraged. Disposition by order rather than by opinion reflects the precedential value of a case,

not necessarily its merits.

Two of the criteria upon which a case could qualify for disposition by opinion and the preference for publishing cases which include concurring and/or dissenting opinions have been eliminated consistent with the presumption against publication.

Rule 24. Research Department in Each District of the Appellate Court

In each Appellate Court district there shall be a research department supervised by a director of research and staffed by such number of staff attorneys as the Supreme Court may from time to time determine. The research departments in each district shall perform such duties as may be assigned to it by the presiding judge of the district or, in the First District, by the Executive Committee. The research department of the various districts shall coordinate their activities, exchange information, and publish and maintain a manual of procedures for the research staff. An assistant to the Supreme Court may be assigned by that court to coordinate the activities of the research departments hereby created. The director of research and all staff attorneys employed in any research department shall be graduates of law schools approved by the American Bar Association.

Adopted July 30, 1979, effective October 15, 1979; amended April 10, 1987, effective August 1, 1987.

Committee Comments

Rule 24 is new. It recedes from the recommendation of the 1972 committee report for a statewide research department and incorporates the development of research departments in each district with a coordination of the activities of those departments by an assistant to the Supreme Court.

Rules 25-29. Reserved

Rule 30. Administrative Duties of the Chief Justice and the Administrative Director

(a) The Chief Justice. The chief justice of the Supreme Court shall be responsible for the administration of all courts in the State. To assist the chief justice, the court shall appoint an Administrative Director to serve at its pleasure, who shall report directly to the chief justice. If there is a vacancy in the office of the chief justice, the senior justice shall serve temporarily as acting chief justice. Seniority shall be determined as provided in Rule 31. If the chief justice is absent or unable to serve, the senior justice shall serve temporarily as acting chief justice.

(b) The Administrative Director. The Administrative Director of the courts shall be generally responsible for the enforcement of the rules, orders, policies and directives of the Supreme Court and the chief justice relating to matters of administration. At the direction of the chief justice and the Supreme Court, the Administrative Director shall develop, compile and promulgate administrative rules and directives relating to case processing, records and management information services, personnel, budgeting and such other matters as the chief justice and the

Supreme Court shall direct. The Administrative Director also shall perform such other functions and duties as may be assigned by the chief justice or by the Supreme Court.

Adopted November 21, 1988, effective January 1, 1989; amended June 22, 2017, eff. July 1, 2017.

Rule 31. Seniority in the Supreme Court

Seniority among the judges of the Supreme Court shall be determined by length of continuous service, but if the terms of two or more judges begin at the same time they shall determine the seniority as between or among themselves by lot, unless they are able to determine it by agreement.

Committee Comments

This is former Rule 56 without change of substance.

Rule 32. Reserved

Rule 33. Library of Supreme Court

The librarian of the library of the Supreme Court shall not permit any person except judges of the court to take any book from the library without the consent of the court or the chief justice. No books shall be marked or underlined, nor shall the pages of any book be folded down. Any person who offends against the provisions of this rule is in contempt of the Supreme Court.

Committee Comments

This is former Rule 55 with minor language changes.

Rules 34-38. Reserved

Rule 39. Appointment of Associate Judges

(a) Terms.

(1) The terms of all associate judges in office shall expire on June 30th of every fourth year subsequent to 1975, regardless of the date on which any judge is appointed. Notwithstanding the provisions for conditional notices of vacancy as contained in paragraph (a)(2) of this rule, the office of an associate judge shall be vacant upon his or her death, resignation, retirement, or removal, or upon the expiration of his or her term without his or her reappointment. When a sitting associate judge submits in writing his or her resignation, the chief judge of the circuit may, no sooner than 120 days before the effective date of such resignation, cause notice of the vacancy to be given pursuant to subpart (b) of this rule, provided that the candidate appointed to fill the vacancy shall not take office before the effective date of such resignation.

(2) In those instances where a sitting associate judge is running unopposed or where two or more associate judges are the only candidates opposing one another in the general election

and an associate judge vacancy therefore can be anticipated, the Administrative Director may, upon the chief judge's request, approve posting of a conditional notice of vacancy not more than 30 days prior to the general election and absent a letter of resignation from a sitting associate judge. The conditional notice of vacancy shall clearly advise potential associate judge candidates that the vacancy is contingent upon certification by the Illinois Board of Elections of general election results declaring a sitting associate judge the winner. Prior to the distribution of ballots provided for in paragraph (b)(4), the Director shall await the Illinois Board of Elections' certification of the general election results.

(b) Filling Vacancies. Vacancies in the office of associate judge shall be filled in the following manner:

(1) *Notice of Vacancy.* Upon approval of the Director of the Administrative Office of the Illinois Courts, the chief judge of the circuit shall, after forwarding a copy of the notice to the Director, cause notice to be given to the bar of the circuit, in the same manner as notice of matters of general interest to the bar is customarily given in the circuit, that the vacancy exists and will be filled by the judges of the circuit. The notice of vacancy shall be given as soon as practicable, but no later than 30 days after the accumulation of five consecutive vacancies for which notice has not been given. If the chief judge of the circuit fails to give notice within the time period prescribed by this provision, the Chief Justice of the Supreme Court may direct the Director of the Administrative Office of the Illinois Courts to give notice of the vacancies in the manner prescribed by this rule.

(2) *Applications and Certification.* Any attorney who seeks appointment to the office of associate judge must be a United States citizen, licensed to practice law in this state, and a resident of the unit from which he or she seeks appointment. Applicants shall have 30 days after the notice of vacancy is given within which to electronically file with the Director of the Administrative Office of the Illinois Courts a signed application on the form prescribed and furnished by the Director. If an applicant is not able to submit an application electronically, an applicant shall have 30 days after the notice of vacancy is given within which to file with the Director of the Administrative Office of the Illinois Courts two signed originals of an application on the form prescribed and furnished by the Director. Applications must be received by the Director within the 30-day period. Applications transmitted via facsimile will not be accepted. At the close of the application process, the Director shall certify to the chief judge a list of those applicants who have timely filed and provide a copy of those applications.

(3) *Nomination.* In judicial circuits having a population of more than 500,000, the chief judge of each circuit and at least two but not more than 10 additional circuit judges selected by their fellow circuit judges shall serve as a nominating committee for candidates for appointment to the office of associate judge of their circuit. If there are fewer than 20 circuit judges in a circuit, all of the circuit judges may sit as a nominating committee. When one or more vacancies in the office of associate judge are to be filled, the nominating committee shall select from the applications filed twice as many names of qualified candidates as there are vacancies to be filled.

(4) *Distribution of Ballots and Related Materials.*

(i) In judicial circuits having a population of more than 500,000, the chief judge shall notify the Director of the names of those candidates selected by the nominating committee and request that the Director initiate the balloting process. Within 14 days after the chief judge's notification, the Director shall place the name of each candidate on a ballot in alphabetical order. The ballot shall also contain blank spaces equal in number to the number of vacancies to be filled, in which spaces may be written the name of any qualified applicant whose name does not appear on the ballot as a candidate.

(ii) In judicial circuits having a population of less than 500,000, the chief judge shall request that the Director initiate the balloting process. Within 14 days after the chief judge's request, the Director shall place the name of each candidate on a ballot in alphabetical order.

(iii) A ballot and a brief biographical synopsis of each candidate shall be mailed to each circuit judge in the circuit. Each ballot shall also be accompanied by a stamped, addressed return envelope, an envelope marked "For Ballot Only," and a signature card. Upon request, any circuit judge may obtain a copy of the complete application of any applicant.

(5) *Balloting.* Each circuit judge shall complete his or her ballot by voting for not more than one candidate for each vacancy to be filled, enclose the ballot in the envelope marked "For Ballot Only," seal the envelope, sign the signature card, and enclose that envelope and signature card in the stamped, addressed return envelope, which shall be delivered to the Director within 14 days of the date the ballots were distributed. The Director shall count the ballots which are accompanied by a signed signature card, tabulate the results and certify them to the chief judge, maintaining the secrecy of the ballots.

(6) *Results of Balloting; Runoffs.*

(i) In judicial circuits having a population of more than 500,000 the candidates receiving the most votes shall be declared to be appointed to fill the vacancies. Where a tie prevents a winner from being declared, reballoting shall proceed in the manner provided above for the first balloting except that ballots shall include only the names of those candidates whose tied votes prevented a winner from being declared.

(ii) In judicial circuits having a population of less than 500,000 the candidates receiving votes from a majority of the circuit judges who have voted shall be declared to be appointed to fill the vacancies. If there are not enough candidates receiving majorities to fill all the vacancies, the Director shall list alphabetically on a runoff ballot the remaining candidates, in number equal to twice the number of remaining vacancies, who received the most votes in the first balloting (or twice that number plus any who are tied with the candidate in the list who received the least number of votes). The candidates receiving the most votes in the runoff balloting shall be declared to be appointed to vacancies not filled as a result of the first balloting. Where a tie prevents a winner from being declared, reballoting shall proceed in the manner provided above for the first balloting except that ballots shall include only the names of those candidates whose tied votes prevented a winner from being declared.

(c) Reappointment of Associate Judges Upon Expiration of Their Terms.

(1) *Request for Reappointment.* An associate judge may file a request for reappointment with the chief judge of the circuit at least three months but not more than six months before the expiration of his or her term. At least 63 days before the expiration of the terms of associate judges, each chief judge shall certify to the Director the names of the associate judges in the circuit who have requested reappointment.

(2) *Distribution of Ballots.* At least 40 days before the expiration of the terms of associate judges, the Director shall prepare and distribute ballots on which each circuit judge shall vote on the question whether each associate judge who has requested reappointment shall be reappointed for another term. Each ballot shall be accompanied by a stamped, addressed return envelope, an envelope marked "For Ballot Only," and a signature card.

(3) *Balloting.* Each circuit judge shall complete his or her ballot, enclose it in the envelope marked "For Ballot Only," seal the envelope, sign the signature card, and enclose the sealed envelope and signature card in the stamped, addressed return envelope, which shall be delivered to the Director within 14 days after it was distributed. The Director shall count the ballots which are accompanied by a signed signature card, tabulate the results and certify them to the chief judge, maintaining the secrecy of the ballots. If three fifths of the circuit judges voting on the question vote in favor of reappointment of an associate judge, he or she shall be declared reappointed for another term.

(d) Definition of "Circuit Judge." For the purposes of this rule, "circuit judge" shall include a circuit judge elected or appointed to a term of office within a circuit (or a unit defined by law which is smaller than the circuit), including a circuit judge who is assigned to the Supreme or the Appellate Court (whether relieved of judicial duties on the circuit court or not), and a circuit judge temporarily recalled from retirement and assigned to judicial duty as a circuit judge in the circuit from which the circuit judge had been elected or appointed, but shall not include a circuit judge who was elected or appointed in another circuit but is temporarily assigned to a circuit which is in the process of selecting or retaining an associate judge. A circuit judge appointed to office during the balloting period may vote to fill associate judge vacancies in his or her circuit if the circuit judge has been sworn in and has provided a copy of his or her signed oath of office to the Director. The newly appointed circuit judge must complete and deliver his or her ballot to the Director within the same 14-day period that the ballots were distributed to the circuit judges under paragraph (b)(5). In no instance will the 14-day period specified in paragraph (b)(5) be extended for those circuit judges appointed to office during the balloting period.

Effective July 1, 1971; amended effective October 14, 1971; amended April 1, 1992, effective August 1, 1992; amended December 3, 1997, effective January 1, 1998; amended December 17, 1999, effective immediately; amended March 16, 2001, effective immediately; amended November 27, 2002, effective immediately; amended May 28, 2003, effective immediately; amended January 25, 2007, corrected January 26, 2007, effective February 1, 2007; amended April 23, 2009, effective July 1, 2009; amended Oct. 30, 2012, effective immediately; amended Dec. 28, 2012, eff. immediately; amended Jan. 29, 2015, eff. immediately; amended Aug. 10, 2015, eff. Sept. 1, 2015; amended Oct. 15, 2015, eff. immediately; amended May 31, 2018, eff. immediately.

Committee Comments

(July 1, 1971)

This rule implements section 8 of article VI of the new Illinois Constitution, which provides, "Associate Judges shall be appointed by the Circuit Judges in each circuit as the Supreme Court shall provide by rule."

Rule 40. Marriage and Civil Union Divisions

(a) Creation. The chief judge of any judicial circuit may, by administrative order, establish a marriage and civil union division in any county in the circuit and specify the times and places at which those judges willing to perform marriage solemnizations and civil union certifications will normally be available to do so. A marriage and civil union fund may be established on a circuitwide basis rather than a county-by-county basis when the chief judge, along with the majority of circuit judges, determines that the circuit's judicial needs are best served by a circuitwide fund.

(b) Clerk—Fee. The chief judge may provide that the clerk of the circuit court or someone designated by the clerk shall attend each regular session of each marriage and civil union division to assist the judge assigned thereto. The chief judge may set a fee to be collected by the clerk in an amount not to exceed $10 for each marriage solemnization or civil union certification performed. No additional fee or gratuity will be solicited or accepted.

(c) Trust Account. The fees received shall be deposited in a federally insured or fully collateralized bank account in the name of the "Marriage and Civil Union Fund of the Circuit Court of _____ County" or the "Marriage and Civil Union Fund of the _____ Circuit Court." The trustees of the account shall be three in number, consisting of the chief judge, the administrative secretary to the chief judge, and a resident circuit judge of the county. If there is no administrative secretary to the chief judge, or if there is no resident circuit judge of the county, the chief judge shall designate one or two fellow circuit judges as his or her co-trustees. Money in a marriage and civil union fund may be spent in furtherance of the administration of justice for the following items:

bank charges;

business meal costs when an agenda is prepared for the meeting;

courtroom and judicial office improvements;

electronic legal research services;

equipment-purchase, repair, and service;

judicial robes-purchase, repair, and cleaning;

jury room supplies and equipment;

legal publications;

membership dues for legal and judicial associations;

name plates for judges;

office supplies;

pictures, plaques, and frames for the courthouse;

public education/awareness program materials;

training courses approved by the judicial education committee;

training and professional education programs for nonjudicial employees of the judicial branch; and

travel for judicial business, not to exceed reimbursement levels consistent with the Supreme Court's travel reimbursement guidelines for judicial and nonjudicial members of the judicial branch.

Payment of a reasonable per diem fee to the clerk, or person designated by the clerk, who attends the marriage and civil union division on a day other than a regular working day may be made from the fund.

(d) Reporting and Auditing Requirements.

(1) Funds with Balances Under $50,000 at the end of the State Fiscal Year. For marriage and civil union funds that reflect a balance under $50,000 at the end of each State Fiscal Year (June 30), the chief judge of the circuit shall file, quarterly in the next fiscal year, reports with the Administrative Director of the Illinois Courts. The reports shall be filed not later than the fifteenth of each October, January, April and July. The report shall contain (i) the name of the marriage and civil union fund; (ii) the quarter end date; (iii) the balance on hand at the beginning of the quarter; (iv) the total income, including a detailed list of any income other than marriage and civil union fees for the quarter; (v) the total expenses for the quarter with a detailed list including the name of the vendor paid, description of the goods or services purchased, and the amount of each expense, and (vi) such other information as deemed necessary by the Administrative Director. The report shall be in a format prescribed by the Administrative Office. These reports shall be prepared by the administrative secretary or the resident judge and approved by the chief circuit judge.

(2) Funds with Balances of $50,000 and over at the end of the State Fiscal Year. On an annual basis, and not later than September 30, the chief judge of the circuit shall file with the Administrative Director of the Illinois Courts a professional, independent audit conducted by an accredited audit firm for each marriage and civil union fund in his or her circuit reflecting a balance of $50,000 and over at the end of the prior State fiscal year. The content of the annual audit shall be consistent with the reporting requirements contained in paragraphs (d)(1)(i) through (d)(1)(vi) of this rule.

(3) Records relating to the revenue and expenses of the marriage and civil union funds shall be retained in either paper or electronic format for the current State Fiscal Year plus five (5) prior fiscal years.

(e) Excess Funds to County Treasurer. The trustees for all marriage and civil union funds shall pay into the county general fund or other judicial-related county funds such amounts as in their judgment may be appropriate.

Effective April 1, 1974; amended January 7, 2002, effective March 1, 2002; amended October 29, 2004, effective January 1, 2005; amended May 24, 2006, effective immediately; amended December 6, 2006, effective January 1, 2007; amended December 17, 2007, effective January 1, 2008; amended May 26, 2011, effective immediately; amended October 1, 2014, eff. immediately.

JUSTICE FREEMAN, dissenting:

I would quickly join the court in adopting the March 1, 2002, amendments to Supreme Court Rule 40 (134 Ill. 2d R. 40), which increase auditing and spending accountability, but for my fundamental constitutional concern with certain parts of the rule itself. Notwithstanding the amendments, the collection and disbursement of marriage fees is simply beyond this court's constitutional authority. So, while I commend the efforts taken today by my colleagues, I must dissent because the provisions amended are themselves invalid under the separation of powers doctrine.

Although there is no question that the Illinois Constitution provides this court with the authority to create, within the circuit courts, marriage divisions such as those provided for in Rule 40(a), our Constitution gives to the General Assembly-not this court-the power to set and control the deposit and disbursement of fees. The Constitution states that "[f]ees may be collected as provided by *law and by ordinance* and shall be deposited upon receipt with the treasury of the unit." (Emphasis added.) Ill. Const. 1970, art. VII, §9. The phrase "by law," as used in our Constitution, means the General Assembly's entire lawmaking process and encompasses the "normal legislative manner." *Quinn v. Donnewald*, 107 Ill. 2d 179, 186-87 (1985). This court has recognized that the normal legislative manner consists of the vote of a majority of both houses of the General Assembly, with presentment to the Governor for his or her action, bills that successfully passed each house of the legislature. *Quinn*, 107 Ill. 2d at 186-87. In defining the phrase "by law," this court specifically relied on the drafters' meaning of the phrase as was recorded at the Constitutional Convention. *Quinn*, 107 Ill. 2d at 186. In particular, the court noted the remarks of Delegate Wayne W. Whalen, who stated that

> " '[t]he reason for the addition of the words "by law" was to point out to you that it was not the intent of the Committee of the Whole or the Substantive Committee that the General Assembly could act in any other way than the law-making process. As you know, the General Assembly can act by rule, it can act by resolution; that was not the intent. The intent was to use the entire law-making process as set out in the constitution, so to clarify this ambiguity we added the term "by law" ***.' " *Quinn*, 107 Ill. 2d at 186, quoting 3 Record of Proceedings, Sixth Illinois Constitutional Convention 2180 (statements of Delegate Whalen).

Delegate Whalen's construction of the phrase is faithful to its commonly understood legal meaning-Black's Law Dictionary notes that the phrase "provided by law" when used in a constitution or statute generally means "prescribed or provided by some statute" (Black's Law Dictionary 1102 (5th ed. 1979)), and his construction was understood by the delegates to be the meaning of the phrase throughout the entire constitutional document. See 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3416 (comments of Delegate Netsch, stating "the Style

and Drafting Committee has adopted a practice *** whereby the expression 'by law' refers only to laws enacted by the General Assembly"); see also 4 Record of Proceedings, Sixth Illinois Constitutional Convention 2629 (comments of Delegate Nudelman). In short, the constitutional provision "as provided by law" means "as by provided by statute." In other words, the Constitution means to exclude, as the source of fee provisions, any rulemaking authority, judicial or otherwise.

Any doubt about this construction is dispelled by the fact that the Constitution provided, in juxtaposition, that fees might also be collected by municipal ordinances. An "ordinance" is defined as "a local rule enacted by a unit of government pursuant to authority delegated by the State." *City of Peoria v. Toft*, 215 Ill. App. 3d 440, 443 (1991). In light of the phrase "by law or ordinance," the Constitution demands that fees be enacted through the legislative process, on a statewide basis or on a local government basis, as opposed to any judicial rulemaking process.

Pursuant to this constitutional grant of authority, our General Assembly has set out an extensive fee schedule in the Clerks of Courts Act (705 ILCS 105/0.01 *et seq.* (West 1998)), which is arranged according to county population. See 705 ILCS 105/27.1 (West 1998) (pertaining to counties of 180,000 or less); 705 ILCS 105/27.1a (West 1998) (pertaining to counties over 180,000, but not more than 650,000); 705 ILCS 105/27.2 (West 1998) (pertaining to counties over 650,000, but less than 3 million); 705 ILCS 105/27.2a (West 1998) (pertaining to counties of 3 million or more). The Act sets a $10 fee for all in-court marriages in counties having populations of not more than 650,000. See 705 ILCS 105/27.1(b)(3), 27.1a(a-1) (West 1998). The legislature has not expressly provided a fee amount for in-court marriages performed in counties having populations greater than 650,000. In these counties, the legislature has provided that "[a]ny fees not covered in this Section shall be set by rule or administrative order of the Circuit Court with the approval of the Administrative Office of the Illinois Courts." 705 ILCS 105/27.2(r), 27.2a(r) (West 1998). Thus, we, as a court, have been given authority by the legislature to set a fee for in-court marriages performed in counties having populations of over 650,000. Rule 40(b), which provides for a $10 marriage fee, is only constitutional in those counties where the legislature has not expressly provided for an in-court marriage fee.

This court's authority to direct the deposit and disbursement of the fees collected by the clerks of the circuit courts is also governed by our Constitution. Section 9(a) states:

> "Compensation of officers and employees and the office expenses of units of local government shall not be paid from fees collected. Fees may be collected as provided by law and by ordinance and shall be deposited upon receipt with the treasurer of the unit. Fees shall not be based upon funds disbursed or collected, nor upon the levy or extension of taxes." Ill. Const. 1970, art. VII, §9(a).

In order to implement this constitutional ban on fee offices within units of local government and the judicial system, the General Assembly enacted the Fee Deposit Act in 1972. *Kaden v. Kagann*, 260 Ill. App. 3d 256, 265 (1994). Section 2 of the Fee Deposit Act mandates

> "All elected or appointed officials of units of local government, and clerks of the circuit courts, authorized by law to collect fees which collection is not prohibited by Section 9 of Article VII of the Constitution, shall deposit all such collected fees upon receipt with the county treasurer or treasurer of such other unit of local government, as the case may be, except as otherwise

provided by law; and except that such officials may maintain overpayments, tax redemptions, trust funds and special funds as provided for by law or local ordinance." 50 ILCS 315/2 (West 1998).

Section 2 of the Fee Deposit Act requires that, except as "provided by law" to the contrary, monies collected by the clerks of the circuit court cannot be deposited with any entity other than the county treasurer. As noted above, the phrase "provided by law" means a statute-not judicial rulemaking. Furthermore, section 2's reference to "trust funds" does not mean trust funds provided by judicial rule, but rather those "provided for by law or local ordinance." The trust fund established in Rule 40(c) does not fall within the ambit of this exception. Indeed, my research has not revealed the "law or local ordinance" by which the in-court marriage fees collected under Rule 40 may be excepted from deposit with the county treasurer and, instead, placed in a trust fund. The General Assembly, by way of the Fee Deposit Act, has expressly directed that all fees collected by the clerks of the circuit court be deposited with the treasurer of the county in which the court sits. To the extent that this court, through Rule 40, directs otherwise, it would appear that this court is improperly acting in an area wholly reserved, by constitutional fiat, to our legislature.

Our Constitution is silent as to the disposition or disbursement of fees. Our appellate court has recognized that the drafters of the 1970 Constitution, in contemplating the inclusion of a provision in the Constitution that would direct the disposition of fees, believed the issue was a matter for the General Assembly. *Kaden*, 260 Ill. App. 3d at 261 (acknowledging that it was "clear from this debate *** the drafters intended that the General Assembly determine where such fees should be deposited"). I would point out the comments of Delegate Fay: "I must respectfully urge the defeat of this proposed amendment, and the reason I do so is because *** the legislature could take care of this matter, and I think that we should let them do so rather than engraft this in the constitution where it is not needed." 4 Record of Proceedings, Sixth Illinois Constitutional Convention 2632-33 (statements of Delegate Fay). These statements led the appellate court to conclude that the Constitution left the matter of fee disbursement to the authority of our legislative branch of government and that neither the state nor the counties have a constitutional right to fees collected by the circuit court clerks. *Kaden*, 260 Ill. App. 3d at 260-61.

In the absence of an express constitutional provision on a subject, the legislature is free to act. *County of Stark v. County of Henry*, 326 Ill. 535, 538 (1927). The General Assembly has comprehensively provided for the disbursement of clerks' fees in the Clerks of Courts Act. Section 27.5 of that Act states that

"All *fees*, fines, costs, additional penalties, bail balances assessed or forfeited, and any other amount paid by a person to the circuit clerk *that equals an amount less than $55*, except restitution under Section 5-5-6 of the Unified Code of Corrections, reimbursement for the costs of an emergency response as provided under Section 5-5-3 of the Unified Code of Corrections, any fees collected for attending a traffic safety program under paragraph (c) of Supreme Court Rule 529, any fee collected on behalf of a State's Attorney under Section 4-2002 of the Counties Code or a sheriff under Section 4-5001 of the Counties Code, or any cost imposed under Section 124A-5 of the Code of Criminal Procedure of 1963, for convictions, orders of supervision, or any other disposition for a violation of Chapters 3, 4, 6, 11, and 12 of the Illinois

Vehicle Code, or a similar provision of a local ordinance, and any violation of the Child Passenger Protection Act, or a similar provision of a local ordinance, *shall be disbursed within 60 days after receipt by the circuit clerk as follows*: 47% shall be disbursed to the entity authorized by law to receive the fine imposed in the case; 12% shall be disbursed to the State Treasurer; and 41% shall be disbursed to the county's general corporate fund. Of the 12% disbursed to the State Treasurer, 1/6 shall be deposited by the State Treasurer into the Violent Crime Victims Assistance Fund, 1/2 shall be deposited into the Traffic and Criminal Conviction Surcharge Fund, and 1/3 shall be deposited into the Drivers Education Fund. For fiscal years 1992 and 1993, amounts deposited into the Violent Crime Victims Assistance Fund, the Traffic and Criminal Conviction Surcharge Fund, or the Drivers Education Fund shall not exceed 110% of the amounts deposited into those funds in fiscal year 1991. Any amount that exceeds the 110% limit shall be distributed as follows: 50% shall be disbursed to the county's general corporate fund and 50% shall be disbursed to the entity authorized by law to receive the fine imposed in the case. Not later than March 1 of each year the circuit clerk shall submit a report of the amount of funds remitted to the State Treasurer under this Section during the preceding year based upon independent verification of fines and fees. All counties shall be subject to this Section, except that counties with a population under 2,000,000 may, by ordinance, elect not to be subject to this Section. For offenses subject to this Section, judges shall impose one total sum of money payable for violations. The circuit clerk may add on no additional amounts except for amounts that are required by Sections 27.3a and 27.3c of this Act, unless those amounts are specifically waived by the judge. With respect to money collected by the circuit clerk as a result of forfeiture of bail, ex parte judgment or guilty plea pursuant to Supreme Court Rule 529, the circuit clerk shall first deduct and pay amounts required by Sections 27.3a and 27.3c of this Act. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution." (Emphases added.) 705 ILCS 105/27.5 (West 1998).

The comprehensive treatment could not more strongly demonstrate the legislature's intention that *all* fees covered by the law, except those the legislature wanted to exempt, were to be disbursed in the manner described. In fact, the reference to our Rule 529 shows that when the General Assembly wanted to refer to monies collected by way of this court's rules, it expressly so provided. Moreover, the fact that the General Assembly specifically referred to this section as a "denial and limitation" on the home rule power provides further proof of the intention that the General Assembly *itself* solely provide for the disbursement of fees collected by the clerks of our courts. The disbursement provisions contained in Rule 40 are at odds with the statutory provisions mandated by our legislature. Because our Constitution intends for this matter to be left to the legislature and not this court, I believe that the conflict must be resolved in favor of the legislature.

In sum, the Constitution mandates that fees must be collected by statute (or ordinance) and not by judicial rule. The legislature has expressly provided for the collection of fees in the Clerks of Courts Act and has further provided that any fees not covered specifically in that Act shall be set by rule or administrative order of the circuit court with the approval of the Administrative Office of the Illinois Courts. So it is by legislative enactment that the court may, by rule, set those fees

not otherwise provided by law. Our Constitution also mandates that fees collected be deposited with the treasurer of the unit. There is no complementary constitutional provision which mandates the manner in which fees collected by clerks of the courts shall be disbursed; rather the matter is left to legislative authority. The General Assembly has implemented the constitutional mandate regarding fee deposits through enactment of the Fee Deposit Act and has provided for fee disbursements through enactment of the Clerks of Courts Act. Neither of these pieces of legislation grant to this court any authority whatsoever to direct either the deposit or disposition of fees.

Other observations support this conclusion. I refer specifically to the duty given by the legislature to the county boards to provide for court facilities. See 55 ILCS 5/5-1106 (West 1998). Section 5-1106 of the Counties Code mandates that the county board of each county provide reasonable and necessary expenses for the use of, *inter alios*, judges and clerks of the courts. The Code further mandates each county board to provide for proper rooms and offices for the accommodation of the circuit court of the county and to provide "suitable furnishings for such rooms and offices. *** The court rooms and furnishings thereof shall meet with reasonable minimum standards prescribed by the Supreme Court of Illinois. Such standards shall be substantially the same as those generally accepted in court rooms as to general furnishings, arrangement of bench, tables and chairs, cleanliness, convenience to litigants, decorations, lighting and other such matters relating to the physical appearance of the court room." 55 ILCS 5/5-1106 (West 1998). These mandates from the General Assembly are in harmony with the fee deposit and disbursement system established by the legislature-the fees revert directly to the county, which is charged with the responsibility of providing the upkeep of its courts.

The only conclusion that can be reached in light of the foregoing is that this court simply lacks the authority to create marriage trust funds in the manner prescribed in Rule 40. The Illinois Attorney General reached the same conclusion in 1977, when he issued an opinion finding that Rule 40 was inoperative insofar as it authorized deposits and disbursements of fees in contravention of statute. See 1977 Ill. Att'y Gen. Op. 159. Again, the fact that the amendments are well-intended and commendable must be separated from the fact that the collection and disbursement provisions of Rule 40 violate the separation of powers doctrine. This is no small concern. We, as an institution charged with the solemn authority to measure the constitutionality of legislative acts, must also be diligent to circumscribe our conduct to what is constitutionally permissive. Unfortunately, that has not occurred with respect to Rule 40. For these reasons, I respectfully dissent.

Committee Comment

(May 24, 2006)

Rule 40 provides that marriage funds may be expended to support judicial "training courses approved by the judicial education committee." Under this provision, marriage funds may be expended for only those judicial education programs which have been approved for the award of continuing judicial education credit, pursuant to the Supreme Court's Comprehensive Judicial Education Plan for Illinois Judges. The role of the Illinois Judicial Conference Committee on Education, under Rule 40, is limited to review and recommendation to the Supreme Court

regarding the award of judicial education credit. The authority to expend marriage funds for those courses approved by the Court for the award of judicial education credit rests with the chief circuit judges.

Rule 41. Judicial Conference

(a) Duties. There shall be a Judicial Conference to consider the work of the courts and to suggest improvements in the administration of justice. The Judicial Conference shall be the body to strategically plan for the Illinois judicial branch.

(b) Membership.

(1) The membership of the Judicial Conference shall consist of 29 members as follows:

(A) The Chief Justice of the Supreme Court of Illinois, who shall preside over the conference as chairperson;

(B) A justice of the Supreme Court of Illinois;

(C) The Director of the Administrative Office of the Illinois Courts;

(D) An appellate court judge;

(E) The Chief Judge of the Circuit Court of Cook County;

(F) The chairperson and vice-chairperson of the Conference of Chief Circuit Judges;

(G) A judge who is a member of the Illinois Judicial College Board of Trustees;

(H) A judge who is a member of the Supreme Court Commission on Access to Justice;

(I) Seven judges as follows: three judges from the First Judicial District and one judge from each of the other four Judicial Districts;

(J) Three clerks of court, at least two of whom shall be circuit court clerks;

(K) Three trial court administrators or court administrative staff;

(L) Three attorneys licensed to practice law in the State of Illinois;

(M) Three members of the public; and

(N) A person who is not a judge but who is involved with the judicial branch or administration of justice.

(2)(A) All members shall be appointed by the Supreme Court except those members serving on the Judicial Conference by nature of their position designated in subparagraphs (b)(1)(A), (C), (E), and (F).

(B) All members serving on the Judicial Conference by nature of their position designated in subparagraphs (b)(1)(A), (C), (E), and (F) shall serve on the Judicial Conference so long as they hold that position. Of the remaining members appointed by the Supreme Court, one-third shall initially be appointed to a two-year term, one-third shall initially be appointed to a three-year term, and one-third shall initially be appointed to a four-year term. All members appointed or reappointed following these inaugural terms shall serve three-year terms. Other than the inaugural membership, no member may serve more than two consecutive three-year terms (six years), subject to the discretion of the

Supreme Court.

(c) Other Committees, Task Forces, and Work Groups. Subject to the approval of the Supreme Court, the Judicial Conference may establish such other committees, task forces, and work groups as necessary to further the work of the conference.

(d) Meetings of Conference. The conference shall meet at least once annually at a place and on a date to be designated by the Chief Justice.

(e) Administration. Under the direction of the Chief Justice, the Administrative Office of the Illinois Courts shall staff the Judicial Conference.

Amended effective July 1, 1971; amended March 1, 1993, effective immediately; amended September 23, 2008, effective immediately; amended Oct. 11, 2012, effective immediately; amended Oct. 4, 2013, eff. Nov. 1, 2013; amended Dec. 9, 2014, eff. Oct. 1, 2014, *nunc pro tunc*; amended Sept. 28, 2018, eff. Oct. 1, 2018.

Committee Comments

(Sept. 28, 2018)

On Sept. 28, 2018, the Supreme Court reconstituted the Illinois Judicial Conference into an active strategic planning and policy body for the judicial branch of the State of Illinois. Through strategic planning and in consultation with those who work in and with the judicial branch, the Judicial Conference will develop and implement the judicial branch's mission, values, and goals in order to achieve sustainable court governance, a more uniform court system, and an impartial, accessible, and efficient justice system.

Rule 42. Conference of Chief Circuit Judges

(a) Responsibilities. A conference of the chief circuit judges shall meet regularly to consider problems relating to the administration of the circuit courts and such other matters as may from time to time be referred to the conference by this court.

(b) Membership, Officers. The duly elected chief judge of each judicial circuit shall be a member of the conference of chief circuit judges. The chief judges shall select one of their number to serve as chairman of the conference and another to serve as vice-chairman. The chairman and vice-chairman shall serve two-year terms, beginning on January 1 of each even-numbered year and ending on December 31 of each odd-numbered year.

(c) Meetings. The conference shall meet at such times and places as may be designated by the members.

(d) Secretary. The Administrative Office of the Illinois Courts shall be secretary of the conference.

Adopted September 29, 1978, effective November 1, 1978; amended June 15, 1982, effective July 1, 1982.

Rule 43. Lawyers' Assistance Program

(a) Program Description. The Lawyers' Assistance Program shall provide substance abuse and mental health services for attorneys, judges, and law students that may include counseling, the provision of information on addiction and mental health impairments, referrals to treatment programs, peer assistance, education, interventions, relapse prevention, and monitoring of compliance with treatment programs.

(b) Program Provider. The Lawyers' Assistance Program shall be operated by a not-for-profit corporation that is exempt from the payment of federal taxes under section 501(c)(3) of the Internal Revenue Code. Lawyers' Assistance Program, Inc., shall be the designated Lawyers' Assistance Program provider for the State of Illinois.

(c) Program Fee. The Attorney Registration and Disciplinary Commission shall collect an annual Lawyers' Assistance Program fee as provided in Rule 756 from every attorney admitted to practice law in this State paying full annual registration fees. The Attorney Registration and Disciplinary Commission shall remit the program fee directly to the Supreme Court's designated Lawyers' Assistance Program provider.

(d) Reporting. The designated Lawyers' Assistance Program provider shall file annually with the Supreme Court an accounting of the monies received and expended for its activities including but not limited to a financial report by budget category of the previous year's activities, a detailed estimated budget for the next year's activities, and an independent audit, which shall be paid for by the program provider. The program provider shall also file annually with the Supreme Court a report detailing the progress of the program, the operations and services provided, the number of eligible recipients who received services, the effectiveness of its activities, and any significant problem areas that developed and how they were resolved.

Adopted Sept. 21, 2021, eff. Jan. 1, 2022.

Rule 44. Photography and Video in the Courtroom

(a) Except as provided in paragraph (b) of this Rule, the taking of photographs in the courtroom during sessions of the court or recesses between proceedings and the broadcasting or televising of court proceedings are permitted only to the extent authorized by order of the Supreme Court. For the purposes of this rule, the use of the terms "photographs," "broadcasting," and "televising" includes the audio or video transmissions or recordings made by telephones, personal data assistants, laptop computers, and other wired or wireless data transmission and recording devices. This prohibition does not extend to areas immediately adjacent to the courtroom, but courts may by order regulate or restrict the use of those areas where the circumstances so warrant.

(b) The foregoing prohibition is not intended to prohibit local circuit courts from using security cameras to monitor their facilities. Additionally, photography and/or video in the following situations are explicitly permitted

(1) Where permitted pursuant to a court order under the Supreme Court's Extended Media Coverage Policy;

(2) In any proceeding conducted remotely pursuant to Rules 45 and 241 and any other rules governing remote appearances;

(3) To live broadcast any proceeding that is conducted remotely, or at which remote attendance is permitted;

(4) If permitted by the judge, and on such conditions as ordered by the judge, for ceremonial events such as marriages, investitures, and graduations in problem solving courts;

(5) If permitted by the judge, for parties and counsel to make a copy of a court order or other paperwork received in court;

(6) If permitted by the judge, to make a broadcast available to interested persons, such as victims of crime or persons who have a statutory right to be present during court proceedings but who do not wish to attend in person.

(c) Nothing in this Rule permits the photographic recording, digital capturing, or other recording of a remote proceeding or a court broadcast of a proceeding except (1) a recording by the court or at the court's direction or (2) pursuant to the terms of an order approving extended media coverage.

Adopted December 16, 2020, eff. immediately.

Committee Comments

(December 16, 2020)

The prohibition against photographing courtroom proceedings was formerly part of Supreme Court Rule 63. It has been relocated and expanded for a number of reasons. First, Rule 63 is a part of the Canons of Judicial Ethics, and the matters covered by this Rule are not predominantly related to judicial ethics. Second, the increased use of remote court appearances required that the Court provide additional guidance for the use of live streaming court appearances to preserve public access to the courts. Finally, the process of revising the Rule brought to light other instances in which courtroom photography or video are already permitted or are otherwise desirable.

Rule 45. Participation in Civil or Criminal Proceedings by Telephone or Video Conferences

The court may, upon request or on its own order, allow a case participant to participate in a civil or criminal matter remotely, including by telephone or video conference. Use of telephone or video conferences in criminal or juvenile delinquency matters shall be undertaken consistent with constitutional guarantees applicable to such proceedings.

The court may further direct which party shall pay the cost, if any, associated with the telephone or video conference and shall take whatever action is necessary to ensure that the cost of remote participation is not a barrier to accessing the courts.

Adopted May 22, 2020, eff. immediately.

Committee Comments
(May 22, 2020)

The use of telephone or video conferences was formerly contained in Article II – Rules on Civil Proceedings in the Trial Court as Supreme Court Rule 185 (Telephone or Video Conferences). New Rule 45 recognizes that telephone and video conferences can be used effectively and appropriately in other types of proceedings beyond civil cases. As indicated in the rule, special attention must be given to the use of telephone or video conferencing in criminal or juvenile delinquency proceedings. Continued study as this technology evolves will be necessary to ensure the constitutional guarantees applicable to such proceedings are consistently provided.

Application to Civil Proceedings

Rule 45 covers all nontestimonial court appearances, while Rule 241 addresses civil testimony. New Rule 45 intentionally provides wider latitude for a court to conduct court proceedings remotely by allowing any case participant to request a remote appearance for any reason and by allowing a court to make that decision on its own even if no request has been made by a case participant. While the use of remote participation is ultimately subject to the discretion of the court, appearing remotely under Rule 45 does not require good cause or meeting a particular hardship threshold. The intent of this Rule is that remote appearances should be easy to request and liberally allowed. The Illinois Supreme Court Policy on Remote Appearances in Civil Cases provides additional guidance on the use of this Rule.

This rule adopts the definitions in the Illinois Supreme Court Policy on Remote Appearances in Civil Cases. In particular, a case participant includes any individual involved in a civil case including the judge presiding over the case, parties, lawyers, guardians *ad litem*, minors in the care of the Department of Children and Family Services (DCFS), witnesses, experts, interpreters, treatment providers, law enforcement officers, DCFS caseworkers, and court reporters.

Courts are encouraged to liberally grant requests to appear remotely and to be particularly accommodating of case participants who face an obstacle to appearing personally in court, including but not limited to distance from the court, difficulty with traveling, military service, incarceration, hospitalization or illness, disability, other health or mobility limitations, work or childcare obligations or responsibilities, or limited court operations. Whether telephone versus video technology is appropriate is a determination for the court to make based on each individual case and consideration of any hardship factors. Some case participants may appear by telephone, some by video, and some in person all on the same case.

Courts should first consider obtaining and using free telephone or video conference services before considering fee-based services. Free services are readily available. In this way, a remote

appearance will not impose a cost on a case participant who is not able to pay that cost or would not otherwise incur a comparable cost if appearing in person. Some jurisdictions currently use telephone or video conference services which charge fees. However, to promote access to justice and to remove financial barriers to remote court appearances, courts should consider obtaining and using both paid and free services. Local rules and practices should not prohibit the use of free services for remote court appearances.

Additionally, any fees associated with a remote court appearance should be subject to waiver for case participants who cannot afford them. If a court chooses to use a service that requires the payment of fees, the court should consider whether the costs can be waived by the service, paid by another party, or paid by the court, or if the court should use a free service instead. The focus should be on increasing accessibility to the courts and not on imposing an additional barrier to a remote court appearance in the form of a fee. The court or circuit clerk shall not impose their own fees for case participants to do remote court appearances.

Rule 46. Official Record of Court Proceedings

(a) Taking of the Record. The record of court proceedings may be taken by stenographic means or by an electronic recording system, including video conferencing services, approved by the Supreme Court. All transcripts prepared as the official record of court proceedings shall be prepared pursuant to applicable supreme court rules.

(b) Security of the Record. The confidentiality of court proceedings and the retention and safekeeping of notes and electronic recordings shall be maintained consistent with standards established by the Supreme Court through its Administrative Office.

(c) Court Reporting Personnel. For purposes of this rule and other supreme court rules regarding the official record, "court reporting personnel" shall include:

(1) court reporters as defined by the Court Reporters Act (705 ILCS 70/1);

(2) court personnel who have fulfilled the training and certification standards promulgated by the Supreme Court and consistent with paragraph (d) of this rule; and

(3) certified shorthand reporters hired through an agency or as an independent contractor by a private party or parties to take a stenographic record in court proceedings.

(d) Electronic Recording of Court Proceedings.

(1) The Supreme Court shall provide for and prescribe the types of electronic recording equipment and video conferencing services that may be used in the circuit courts. Those jurisdictions with electronic recording systems installed are required to properly utilize and staff such equipment in order to produce a reliable verbatim record of the proceedings.

(2) Court reporting personnel, including court reporters as defined by the Court Reporters Act (705 ILCS 70/1), must successfully complete training and certification designed to qualify them to operate electronic recording equipment, prepare transcripts from such proceedings, and certify the record on appeal. Such training and certification shall be consistent with standards established by the Supreme Court, through its Administrative Office.

(3) Electronic recordings of proceedings shall remain under the control of the court having

custody of them. The chief judges shall provide for the storage and safekeeping of such recordings consistent with the standards referenced in paragraph (b) of this rule.

(4) The Administrative Office shall monitor the operation of electronic recording equipment, the security of the electronic recordings, and the training of court reporting personnel to assure that each county is in compliance with this rule.

Adopted December 13, 2005, effective immediately; amended May 22, 2020, eff. immediately.

Rules 47-55. Reserved

Rule 56. Temporary Assignment to Other Duties

(a) Policy. In order to promote public confidence in the integrity and impartiality of the judiciary, and taking into consideration the nature and severity of any charges against or implications of improper conduct by a judge, a chief judge of the circuit court, or the presiding judge in the appellate court, whichever the case may be, may temporarily assign a judge to restricted duties or duties other than judicial duties. A chief circuit judge, or the presiding appellate judge, whichever the case may be, shall enter a written administrative order setting out the reasons for such assignments. The reasons for such assignments may include, but need not be limited to, the following:

(1) the judge has been formally charged with the commission of a crime which involves moral turpitude or reflects adversely upon the judge's fitness to serve; or

(2) a complaint has been filed with the Courts Commission by the Judicial Inquiry Board or a judge has allegedly committed a violation of the Code of Judicial Conduct which involves fraud, moral turpitude, persistent nonperformance of judicial duties or threatens irreparable injury to the public, to the judicial branch of government, or to the orderly administration of justice;

(3) a judge has been publicly implicated in conduct which, if true, would constitute impropriety or an appearance of impropriety which involves moral turpitude or threatens irreparable injury to the public, to the judicial branch of government, or to the orderly administration of justice; or

(4) There is reasonable cause to believe that a medical examination would reveal that a judge is mentally incompetent or physically unable to perform his or her duties, whether the impairment is caused by injury, infirmity, a chemical dependency, other disease, or by any other cause whatever, and it appears that the incompetence is or may be permanent or will likely be of such duration that the judge's continued assignment to judicial duties could result in irreparable injury to the public, impede the orderly administration of justice, or bring dishonor on the judicial system. Determinations as to a judge's mental or physical ability to perform his or her duties shall be in compliance with all applicable federal and state disability laws.

(b) Form and Service of Order. The chief judge's order shall be served personally upon the

judge. If the judge is unavailable or the judge's whereabouts are unknown, the order shall be served by mailing a copy of the order by ordinary mail to the judge's last known address.

(c) Petition for Return to Full Assignment. Any judge temporarily assigned pursuant to this rule may request that the chief judge vacate the order. In the alternative the judge may, at any time, petition the Supreme Court for a return to full-duty assignment. A petition filed with the Supreme Court shall be in accordance with procedures outlined in Rule 383.

Adopted November 29, 1990, effective December 1, 1990; amended December 1, 2008, effective immediately.

Committee Comments

Each judge is elected or appointed to a term of office specified by section 10 of article VI of the Illinois Constitution. During such tenure, a judge is vested with the full jurisdiction of the court to which elected or appointed. However, the matters over which the judge may exercise that jurisdiction on a day-to-day basis is determined in large measure by the judge's *assignment* and is subject to the chief judge's general administrative authority. (Supreme Court Rule 21(b); see *People v. Joseph* (1986), 113 Ill. 2d 36.) The chief circuit judge may assign any judge serving in the circuit to any judicial duty. Assignment of a judge to restricted duties or to duties other than judicial duties (or assignment to no duties) is not expressly dealt with in the Illinois Constitution, but the Committee believes that power falls within the general administrative powers granted to the chief judge by our constitution.

While not normally considered a binding authority on the interpretation of the Illinois Constitution, the Illinois Courts Commission appears to confirm that, in its opinion, the chief circuit judge does possess such power.

In *In re Murphy* (1968), 1 Ill. Cts. Com. 3, the Courts Commission found that Chief Circuit Judge Boyle had acted properly (and, presumably, within the scope of his constitutional powers) when he relieved the respondent of his duties both before the investigation commenced and during the pendency of proceedings before the Commission:

"[T]his Commission finds:

(1) That the action of Chief Judge Boyle in relieving this respondent of his duties and his letter suggesting to the Supreme Court that an investigation should be made by the Commission was a proper action;

* * *

(6) That the action of Chief Judge Boyle in relieving the respondent of his duties during the pendency of this hearing was proper."

This rule suggests circumstances which might warrant assignment of judges to restricted duties or to duties other than judicial duties and provides a procedure by which a chief circuit judge may temporarily assign judges to restricted duties or to duties other than judicial duties. This rule is modeled, in part, on Rule 774, Interim Suspension, under which the Supreme Court, on its own

motion or on motion of the ARDC Administrator, may temporarily suspend an attorney from the practice of law, pending the outcome of prosecutions or investigations.

A judge assigned under this rule may seek relief either by asking the chief judge to vacate the order or by petitioning the Supreme Court for a return to a full-duty assignment. If the judge believes that a request directed to the chief judge would be unavailing, the judge is not bound to exhaust that possible remedy before filing his petition with the Supreme Court.

Assignments under this rule do not affect a judge's right to salary or to any of the emoluments of office, and are not disciplinary in nature. (*Cf. In re Kaye* (1974), 1 Ill. Cts. Com. 36.) If a judge is to be removed from office, suspended without pay, censured or reprimanded for any misconduct, or if a judge is to be suspended, with or without pay, or retired for being either physically or mentally unable to perform his or her duties, the Judicial Inquiry Board and the Courts Commission are responsible for conducting hearings and proceedings and imposing whatever remedy may be appropriate.

Rule 57. Reserved

Rule 58. Judicial Performance Evaluation

(a) Definitions.

(1) Whenever the word "judge" is used in this rule, it includes only circuit and associate judges.

(2) Whenever the pronoun "he" is used in this rule, it includes the feminine as well as the masculine form.

(b) Preamble. The courts, the public and the bar have a vital interest in a responsive and respected judiciary. In its supervisory role and pursuant to its power over the court system and judges, the court has determined that the periodic evaluation of a judge's performance is a reliable method to promote judicial excellence and competence. Accordingly, the court has authorized a program of mandatory judicial performance evaluation. The program shall be supervised by the court and shall be implemented and monitored by a committee appointed by the court designated as the Judicial Performance Evaluation Committee, which shall establish procedures to implement this program.

(c) Purpose. There shall be a mandatory program of judicial performance evaluation for the purpose of achieving excellence in the performance of individual judges and the improvement of the judiciary as a whole.

(d) Confidentiality. The program must be conducted candidly and in strict confidence so that evaluations may be based on objective criteria and the areas for improvement determined fairly. Except as provided herein, the disclosure of evaluation information would be counterproductive to the goals of the evaluation program, reduce the free flow of comment, and result in the termination of the program. The following rules of confidentiality are essential to the successful implementation of the judicial evaluation program.

(1) Information Obtained. Except as provided herein, all information, questionnaires,

notes, memoranda, electronic and computer data, and any other data obtained and used in the course of any judicial performance evaluation shall be privileged and strictly confidential. For the purpose of self-improvement, only the individual judge evaluated and the agents assigned to present the data to the judge will be permitted to know to which judge particular information applies. However, under Illinois Supreme Court Rule 21(b)-(d), if a chief judge has reason to believe that a judge's conduct negatively affects the operations of the court or public confidence in the court and the judge continues to fail to perform his or her judicial duties or to comply with a directive of the chief judge within the prescribed time period under that rule (collectively the alleged unsatisfactory conduct or performance) and if the chief judge documents in writing this alleged unsatisfactory conduct or performance, the chief judge, in his or her discretion, may request the Supreme Court to approve the obtaining of any past judicial performance evaluations of that judge. Thereafter, in its discretion, the Supreme Court can approve or not approve the request. The chief judge's request and the Supreme Court's decision shall not be made public. If the Supreme Court approves the request, the chief judge and the judge will receive any such evaluations. The chief judge can only use any such evaluation for the purposes of Rules 21 and 58. Moreover, as part of this process and as part of its administrative and supervisory powers under the Illinois Constitution (article VI, section 16), the Supreme Court, in its discretion, may obtain and review any judicial performance evaluations of the judge. A request by a chief judge or the Supreme Court for access to any judicial performance evaluation applies only to those evaluations created after the effective date of this amendment. The information, in summary form only and without disclosing the names of individual judges, may also be used separately by the Supreme Court and its designated agents for the purposes of improvement of the judiciary, and for use in administering the courts and for the development of judicial education programs. The identity of any person who provides information shall be privileged and held confidential and shall not be made available to any person. In addition, information disclosing a criminal act may be provided to law enforcement authorities at the direction of the Supreme Court. Requests for such information shall be made by written petition setting forth in particularity the need for such information. All information and data provided to law enforcement authorities pursuant to this paragraph shall no longer be deemed privileged and confidential. As to all information and data obtained in the operation of the program for judicial performance evaluation, the members of the Oversight Committee are hereby exempted from the requirements of the following rules of this court: Article I, Rule 63B(3) (Code of Judicial Conduct), and Article VIII, Rule 8.3 (Illinois Rules of Professional Conduct), except as herein provided.

(2) Admissibility as Evidence. Except as disclosed pursuant to paragraph (d)(1) hereof, all information, questionnaires, notes, memoranda or other data declared to be privileged and confidential hereby shall not be admissible as evidence, nor discoverable in any action of any kind in any court or before any tribunal, board, agency or person.

Adopted September 30, 1988, effective October 1, 1988; amended April 1, 1992, effective August 1, 1992; amended March 1, 2011, effective immediately; amended Dec. 6, 2021, eff. Jan. 1, 2022.

Committee Comments
(December 6, 2021)

The changes to Rule 58 maintain the essential confidentiality of this evaluation process but add an exception to the rule. Amended Rule 58 allows the chief judges and the Supreme Court in limited circumstances to have access to the judicial performance evaluations of circuit court and associate judges whose conduct allegedly negatively impacts the operations of the courts or the public confidence in the courts or who persistently fail to perform satisfactorily or to comply with the directives of the chief judges.

Paragraph (d)(1) is amended and adopts and summarizes Rule 21(b)-(d). Now, if a chief judge has reason to believe that a judge's conduct negatively affects the operation of the court or public confidence in the court and the judge continues to fail to perform his or her judicial duties or to comply with a directive of the chief judge within prescribed time periods within that rule, and if the chief judge documents in writing this alleged unsatisfactory conduct or performance, the chief judge, in his or her discretion, may request the Supreme Court to approve the obtaining of any past judicial performance evaluations of that judge. (Previously, judges were subject to one such evaluation in their judicial careers; now they will be subject to more frequent evaluations.) Thereafter, the Supreme Court, in its discretion, may approve or not approve the request. If the request is approved, the chief judge and the judge will receive any such evaluations. A chief judge can only use such evaluations for purposes of Rules 21 and 58. The Supreme Court, in its discretion, may also obtain and review such evaluations. To maintain confidentiality, the chief judge's request and the Supreme Court's decision on the request shall not be made public.

Because this limited confidentiality exception is new, a request by a chief judge or the Supreme Court for access to the judicial performance evaluations of a circuit court or associate judge applies only to those judicial performance evaluations initiated after the effective date of this amendment.

Rules 59-60. Reserved

CODE OF JUDICIAL CONDUCT

Preface

Prior to 1964, Illinois left the matter of judicial ethics to the individual conscience of the judge, subject to the impeachment power of the General Assembly and the requirement that each judge run for reelection at the expiration of his term of office. On January 1, 1964, the effective date of the amendment to the judicial article of the 1870 Constitution, the Courts Commission was

established to investigate, prosecute and adjudicate complaints of judicial misconduct against judicial officers. Concomitantly, the Illinois Judicial Conference adopted advisory Canons of Judicial Ethics.

In January 1970, the Illinois Supreme Court adopted the first rules of judicial conduct, effective March 15 of that year. With the adoption of the 1970 Constitution of Illinois, the present system for the enforcement of judicial ethics through the Judicial Inquiry Board and the Courts Commission was established. This first judicial code was based on the efforts of the Supreme Court Committee on Judicial Ethics. The report recommended that the matter be kept under constant surveillance, particularly "in view of the current work of the American Bar Association in this area and the approaching Constitutional Convention in the state."

With the adoption of a new code of judicial ethics by the American Bar Association in 1972, a joint Illinois State Bar Association and Chicago Bar Association committee submitted a report recommending that the new ABA Code be made the basis of a new Illinois code of judicial ethics. This report was studied by a committee of the Illinois Judicial Conference, whose report in 1975 led to several amendments to the Illinois code in 1976.

The initial determination of the present committee was to propose the adoption of a new code based on the ABA canons. There was general agreement that revisions of the existing code would be sufficient to keep Illinois in the forefront of the modern movement toward full but fair regulation of judicial ethics. Indeed, the comprehensiveness and wisdom of that code is reflected in the fact that it was the committee's conclusion that the adoption of the ABA canons would work no significant substantive changes in the existing law. The unanimous decision of the committee to recommend that the ABA canons be adopted as the foundation of the Illinois rules was primarily predicated on two interrelated factors: the desire for uniformity with rules governing judicial officers in other States and the need for a body of interpretative decisions to guide judicial officers when the application of a rule in a particular factual situation is not clear. With regard to the latter problem, an additional benefit lies in the fact that the ABA has established a Standing Committee on Ethics and Professional Responsibility which renders opinions on matters of proper professional or judicial conduct.

It was, of course, not feasible to recommend that the ABA canons be adopted verbatim. Specific provisions of the Illinois Constitution and statutes as well as circumstances unique to Illinois required that the canons be modified in accord with any superseding legal requirements and extraordinary circumstances. The committee commentary is primarily concerned with these modifications; however, wherever appropriate, the ABA commentary has been incorporated into the committee commentary. For an excellent background commentary on the ABA canons themselves see Thode, *Reporter's Notes to Code of Judicial Conduct* (ABA 1973).

Preamble

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all provisions of this code are precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called canons, specific rules set forth in lettered subsections under each canon, and Committee Commentary. The text of the canons and the rules is authoritative. The Committee Commentary, by explanation, and example, provides guidance with respect to the purpose and meaning of the canons and rules. The Commentary is not intended as a statement of additional rules.

The canons and rules are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The canons are not standards of discipline in themselves, but express the policy consideration underlying the rules contained within the canons. The text of the rules is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text of the rules and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

Adopted August 6, 1993, effective immediately.

Terminology

"Candidate." A candidate is a person seeking public election for or public retention in judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support.

"Court personnel" does not include the lawyers in a proceeding before a judge.

"*De minimis*" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality.

"Economic interest" denotes ownership of a more than *de minimis* legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

"Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

"He." Whenever this pronoun is used it includes the feminine as well as the masculine form.

"Judge" includes circuit and associate judges and judges of the appellate and supreme court.

"Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"Law" denotes court rules as well as statutes, constitutional provisions and decisional law.

"Member of a candidate's/judge's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.

"Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

"Political organization" denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

"Public election." This term includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections.

"Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

"Third degree of relationship." The following persons are relatives within the third degree ~~or~~of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

Adopted August 6, 1993, effective immediately.

Rule 61

CANON 1

A Judge Should Uphold the Integrity and
Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Adopted December 2, 1986, effective January 1, 1987; amended August 6, 1993, effective immediately; amended October 15, 1993, effective immediately.

Committee Commentary

This canon is substantially identical to the 1972 version of the ABA canon.

Rule 62

CANON 2

A Judge Should Avoid Impropriety and the Appearance
of Impropriety in All of the Judge's Activities

A. A judge should respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow the judge's family, social, or other relationships to influence the judge's judicial conduct or judgment. A judge should not lend the prestige of judicial office to advance the private interests of others; nor should a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

Adopted December 2, 1986, effective January 1, 1987; amended October 15, 1993, effective

immediately.

Committee Commentary

This canon is substantially identical to ABA Canon 2. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on his or her conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of a judge as a character witness injects the prestige of judicial office into the proceeding in which the judge testifies and may be misunderstood to be an official testimonial. This canon, however, does not afford a judge a privilege against testifying in response to an official summons.

Rule 63

CANON 3

A Judge Should Perform the Duties of Judicial Office Impartially and Diligently

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before the judge.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of self-represented litigants to be fairly heard.

(5) A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, *ex parte* communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication and allows an opportunity to respond.

(b) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(c) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(d) A judge may initiate or consider any *ex parte* communications when expressly authorized by law to do so.

(e) A judge may consult with members of a Problem Solving Court Team when serving as a Judge in a certified Problem Solving Court as defined in the Supreme Court "Problem Solving Court Standards."

(6) A judge shall devote full time to his or her judicial duties, and should dispose promptly of the business of the court.

(7) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to the judge's direction and control. This paragraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(8) Proceedings in court should be conducted with fitting dignity, decorum, and without distraction.

(9) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(10) Proceedings before a judge shall be conducted without any manifestation, by words or conduct, of prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, by parties, jurors, witnesses, counsel, or others. This section does not preclude legitimate advocacy when these or similar factors are issues in the proceedings.

B. Administrative Responsibilities.

(1) A judge should diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

(3) (a) A judge having knowledge of a violation of these canons on the part of a judge or

a violation of Rule 8.4 of the Rules of Professional Conduct on the part of a lawyer shall take or initiate appropriate disciplinary measures.

(b) Acts of a judge in mentoring a new judge pursuant to M.R. 14618 (Administrative Order of February 6, 1998, as amended June 5, 2000) and in the discharge of disciplinary responsibilities required or permitted by Canon 3 or article VIII of the Rules of Professional Conduct are part of a judge's judicial duties and shall be absolutely privileged.

(c) Except as otherwise required by the Supreme Court Rules, information pertaining to the new judge's performance which is obtained by the mentor in the course of the formal mentoring relationship shall be held in confidence by the mentor.

(4) A judge should not make unnecessary appointments. A judge should exercise the power of appointment on the basis of merit, avoiding nepotism and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.

(5) A judge should refrain from casting a vote for the appointment or reappointment to the office of associate judge, of the judge's spouse or of any person known by the judge to be within the third degree of relationship to the judge or the judge's spouse (or the spouse of such a person).

C. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

(c) the judge was, within the preceding three years, associated in the private practice of law with any law firm or lawyer currently representing any party in the controversy (provided that referral of cases when no monetary interest was retained shall not be deemed an association within the meaning of this subparagraph) or, for a period of seven years following the last date on which the judge represented any party to the controversy while the judge was an attorney engaged in the private practice of law;

(d) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding, or has any other more than *de minimis* interest that could be substantially affected by the proceeding; or

(e) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than *de minimis* interest that could be substantially affected by the proceeding; or,

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

D. Remittal of Disqualification.

A judge disqualified by the terms of Section 3C may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. This agreement shall be incorporated in the record of the proceeding.

Adopted December 2, 1986, effective January 1, 1987; amended June 12, 1987, effective August 1, 1987; amended November 25, 1987, effective November 25, 1987; amended August 6, 1993, effective immediately; amended October 15, 1993, effective immediately; amended March 26, 2001, effective immediately; amended April 1, 2003, effective immediately; amended December 5, 2003, effective immediately; amended April 16, 2007, effective immediately; amended June 18, 2013, eff. July 1, 2013; amended Dec. 8, 2015, eff. Jan. 1, 2016; amended Feb. 2, 2017, eff. immediately; amended Dec. 16, 2020, eff. immediately.

Committee Commentary

(April 1, 2003)

New subpart (B)(3)(b) is a modified version of the ABA Model Code of Judicial Conduct, Canon 3D(3) (1990).

New subpart (B)(3)(c) is the identical language currently contained in M.R. 14618 (Administrative Order of February 6, 1998, as amended June 5, 2000) subparagraph (b)(4) on confidentiality.

Committee Commentary

(Revised Dec. 16, 2020)

The provisions of this canon relate to judicial performance of adjudicative responsibilities, judicial performance of administrative responsibilities and the circumstances and procedure for judicial disqualification.

Paragraph A(4) and subsections C and D were amended, effective August 6, 1993, to incorporate the provisions of the Model Code of Judicial Conduct adopted by the ABA in 1990.

Paragraphs A(1) through A(3). The duty to hear all proceedings fairly and with patience is not

inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and business-like while being patient and deliberate.

Paragraph A(5). This paragraph was amended, effective August 6, 1993, to adopt the provisions of Canon 3B(7) of the 1990 ABA Model Code of Judicial Conduct relating to *ex parte* communications. Paragraph A(5) differs in that it modifies ABA Canon 3B(7) by deleting the sentence which provides: "A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond." The committee believed that such a procedure would be too close to the former practice of using masters in chancery which was abolished by the 1962 amendment of the judicial article. Furthermore both bar association committees were concerned with the possibility of a judge seeking advice from a law professor. The committee does not believe that the deletion of this provision affects the obligation of a judge to disclose any extrajudicial communication concerning a case pending before the judge to the parties or their attorneys. The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by paragraph A(5), it is the party's lawyer, or if the party is unrepresented the party, who is to be present or to whom notice is to be given.

Certain *ex parte* communication is approved by paragraph A(5) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage *ex parte* communication and allow it only if all the criteria stated in paragraph A(5) are clearly met. A judge must disclose to all parties all *ex parte* communications described in subparagraph A(5)(a) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that paragraph A(5) is not violated through law clerks or other personnel on the judge's staff.

Paragraph A(6). The ABA 1972 canon provides that "[a] judge should dispose promptly of the business of the court." The committee agreed with the ISBA/CBA joint committee recommendation that the language of the Illinois Constitution (art. VI, §13(b)) which requires that a judge should devote full time to his or her judicial duties should be incorporated into this paragraph. Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under

submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

Paragraph A(7). ABA Canon 3A(6) is adopted without substantive change. It was the view of the committee that, with regard to matters pending before the judge, a judicial officer should discuss only matters of public record, such as the filing of documents, and should not comment on a controversy not pending before the judge but which could come before the judge. "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by Rule 3.6 of the Illinois Rules of Professional Conduct.

Paragraph A(9). A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. A judge must be alert to avoid behavior that may be perceived as prejudicial.

Paragraph B(3). A modified version of the ABA canon was recommended even though Illinois Supreme Court Rule 61(c)(10) only referred to an obligation to refer an attorney's unprofessional conduct in matters before the judge to the proper authorities. Thus the rule here is broader, in that it is not limited to matters before the judge, and in that it extends the obligation to unprofessional conduct of other judges. In the case of misconduct by lawyers, the Rules of Professional Conduct, Rule 8.4, contains the circumstances of misconduct that are covered by paragraph B(3). This canon requires a judge to take or initiate appropriate disciplinary measures where he or she has knowledge of a violation of Rule 8.4. Where misconduct by an attorney is involved, a finding of contempt may, in appropriate circumstances, constitute the initiation of appropriate disciplinary measures. Furthermore, in both cases, the rule does not preclude a judge from taking or initiating more than a single appropriate disciplinary measure. Additionally, a judge may have a statutory obligation to report unprofessional conduct which is also criminal to an appropriate law enforcement official.

Paragraph B(4). It is the position of the committee that this ABA canon implicitly includes the provision of Illinois Supreme Court Rule 61(c)(11) that a judge "should not offend against the spirit of this standard by interchanging appointments with other judges, or by any other device." Appointees of the judge include officials such as receivers and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this paragraph.

Paragraphs C(1)(a) through C(l)(c). When originally adopted on December 2, 1986, the existing ABA canon was modified in two ways. The words "or his lawyer" were added to paragraph C(l)(a) to expressly mandate disqualification in the case of personal bias or prejudice toward an attorney rather than a party. This modification was later incorporated by the ABA into its 1990 revision. More significantly a new subparagraph, C(1)(c), was added in 1986 regulating disqualifications when one of the parties is represented by an attorney with whom the judge was formerly associated and when one of the parties was a client of the judge. These modifications were in substantial accord with the joint committee recommendations. Hence ABA subparagraphs

(c) and (d) were renumbered and are now subparagraphs (d) and (e) respectively.

Paragraphs C(1)(d) and (1)(e). The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Canon 3C(1), or that the relative is known by the judge to have an interest, or its equivalent, in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(l)(e)(iii) may require the judge's disqualification.

Paragraph D. A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

APPENDIX

M.R. No. 2634.

Order entered April 16, 2007; amended February 2, 2017.

Any security cameras installed in the courtrooms in the various circuits shall be in accordance with the following standards; (1) security cameras are to be placed in areas of the courtroom such that there is no video recording of the jury or witnesses; (2) audio recordings of the proceedings are prohibited in connection with security cameras; (3) use of such cameras is limited to security purposes and any video tape produced therefrom shall remain the property of the court and may not be used for evidentiary purposes by the parties or included in the record on appeal; (4) security cameras shall be monitored by designated court personnel only; and (5) signs shall be posted in and outside of the courtroom notifying those present of the existence of the court surveillance.

All recordings from security cameras monitoring court facilities are the property of the local circuit courts and are deemed to be in the possession of the local circuit courts notwithstanding actual possession by another party.

Rule 64

CANON 4

A Judge May Engage in Activities to Improve the Law,
the Legal System, and the Administration of Justice

A judge, subject to the proper performance of his or her judicial duties, may engage in the

following law-related activities, if in doing so the judge does not cast doubt on his or her capacity to decide impartially any issue that may come before him or her.

A. A judge may speak, write, lecture, teach (with the approval of the judge's supervising, presiding, or chief judge), and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he or she may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer, or director of a bar association, governmental agency, or other organization devoted to the improvement of the law, the legal system, or the administration of justice. He or she may assist such an organization in planning fund-raising activities; may participate in the management and investment of the organization's funds; and may appear at, participate in, and allow his or her title to be used in connection with a fund-raising event for the organization. Under no circumstances, however, shall a judge engage in direct, personal solicitation of funds on the organization's behalf. Inclusion of a judge's name on written materials used by the organization for fund-raising purposes is permissible under this rule so long as the materials do not purport to be from the judge and list only the judge's name, office or other position in the organization and, if comparable designations are listed for other persons holding a similar position, the judge's judicial title.

D. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Adopted December 2, 1986, effective January 1, 1987; amended June 4, 1991, effective August 1, 1991; Committee Commentary amended October 15, 1993, effective immediately; amended September 30, 2002, effective immediately; amended May 24, 2006, effective immediately; Committee Commentary amended Dec. 19, 2014, eff. immediately.

Committee Commentary

A judge may serve on a committee that includes other judges, attorneys and members of the community for the purpose of developing programs or initiatives aimed at improving the outcomes for juveniles involved in the juvenile court system, or adults in the criminal court system. Such programs may include diversion, restorative justice and problem-solving court programs, among others.

This canon regulates the permissible scope of a judicial officer's law-related activities. As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that the judge's time permits, he or she is encouraged to do so through appropriate channels.

Extrajudicial activities are governed by Canon 5.

For the distinction between those organizations devoted to the improvement of the law, the legal system, and the administration of justice referred to in paragraph C and other civic or charitable organizations, see Thode at page 76.

Rule 65

CANON 5
A Judge Should Regulate His or Her Extrajudicial Activities
to Minimize the Risk of Conflict With the Judge's
Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on nonlegal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the judge's office or interfere with the performance of the judge's judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties. A judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit or permit his or her name to be used in any manner to solicit funds or other assistance for any such organization. A judge should not allow his or her name to appear on the letterhead of any such organization where the stationery is used to solicit funds and should not permit the judge's staff, court officials or others subject to the judge's direction or control to solicit on the judge's behalf for any purpose, charitable or otherwise. However, a judge may be a speaker or the guest of honor at an organization's fund-raising events and may allow event-related promotional materials, invitations, and other communications to mention such participation by the judge.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judge's judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in the activities usually incident to the ownership of such investments, but a judge should not assume an active role in the management or serve as an officer, director, or employee of any business.

(3) A judge should manage his or her investments and other financial interests to minimize

the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of the judge's family residing in the judge's household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to the judge; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and the judge's spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a member of the judge's family residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a member of the judge's family residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, including lawyers who practice or have practiced before the judge.

(5) Information acquired by a judge in the judge's judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's judicial duties.

D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of the judge's judicial duties. As a family fiduciary a judge is subject to the following restrictions:

(1) The judge should not serve if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to the judge in his or her personal capacity.

E. Arbitration. A judge should not act as an arbitrator or mediator.

F. Practice of Law. A judge should not practice law.

G. Extrajudicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, State, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Adopted December 2, 1986, effective January 1, 1987; amended October 15, 1993, effective immediately; amended May 24, 2006, effective immediately; amended December 7, 2011, effective immediately.

Committee Commentary

This canon governs the permissible scope of a judicial officer's extrajudicial activities. Avocational, civic and charitable, financial, and fiduciary activities are regulated as well as practice as an arbitrator or lawyer and the propriety of accepting extrajudicial appointments. ABA Canon 5(C)(6), which provides that "[a] judge is not required by this Code to disclose his income, debts, or investments except as provided in this Canon and Canons 3 and 6," was deleted as inconsistent with the present Illinois disclosure requirements which are retained in this code. The remaining subparagraphs were renumbered. In adapting the ABA canons to Illinois, certain adjustments were required in this canon because of the impact of article VI, section 13(b), of the Illinois Constitution, which prohibits a judicial officer from holding "a position of profit."

Paragraph (A). Complete separation of a judge from extrajudicial activities is neither possible nor wise; he should not become isolated from the society in which he lives.

Paragraph (B)(1). The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the judge's relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

Paragraph (B)(2). This subparagraph is largely based on Illinois Supreme Court Rule 64. The major difference is that the ABA canon would allow a judicial officer to be listed on the letterhead of such an association as an officer, director or trustee. This canon will not allow that where the letterhead is used to solicit funds. The provision prohibiting a judge from allowing judicial staff to solicit on the judge's behalf for any purpose, charitable or otherwise, is a replacement for the provision of the ABA canon that provides that the judge should not use or permit the use of "the prestige of his office for that purpose."

Paragraph (C)(2). This subparagraph retains the language of Illinois Supreme Court Rule 63. See also 705 ILCS 60/1.

Paragraph (C)(3). This is ABA Canon 5(C)(3). The committee noted that this canon requires divestment of an investment only when it would cause frequent disqualification, and, even in that case, the divestment need not be made until the asset can be disposed of without serious financial detriment.

Paragraph (C)(4). This subparagraph combines ABA Canon 5(C)(4)(c) and the requirements of present Illinois Supreme Court Rule 61(c)(22). The ABA provisions regarding reporting are deleted since that is covered by Canon 6 of this code and by the Illinois Governmental Ethics Act

(5 ILCS 420/1-101 *et seq*.).

Paragraph (D)(2). A judge's obligation under this canon and his or her obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5(C)(3).

Paragraphs (E), (F) and (G). Valuable services have been rendered in the past to the States and the nation by judges appointed by the executive to undertake important extrajudicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the courts from involvement in extrajudicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.

Rule 66

CANON 6

Nonjudicial Compensation and Annual
Statement of Economic Interests

A judge may receive compensation for the law-related and extrajudicial activities permitted by this Code if the source of such payments does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse. Any payment in excess of such an amount is compensation.

C. Annual Declarations of Economic Interests. A judge shall file a statement of economic interests as required by Rule 68, as amended effective August 1, 1986, and thereafter.

Adopted December 2, 1986, effective January 1, 1987; amended June 4, 1991, effective August 1, 1991; amended April 1, 1992, effective August 1, 1992; amended October 15, 1993, effective immediately; amended December 13, 1996, effective immediately; amended September 30, 2002, effective immediately.

Rule 67

CANON 7

A Judge or Judicial Candidate Shall Refrain
From Inappropriate Political Activity

A. All Judges and Candidates.

(1) Except as authorized in subsections B(1)(b) and B(3), a judge or a candidate for election to judicial office shall not:

(a) act as a leader or hold an office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization;

(d) solicit funds for, or pay an assessment to a political organization or candidate.

(2) A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general election.

(3) A candidate for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the provisions of this Canon;

(c) except to the extent permitted by subsection B(2), shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the provisions of this Canon;

(d) shall not:

(i) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues within cases that are likely to come before the court; or

(ii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent; and

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate subsection A(3)(d).

B. Authorized Activities for Judges and Candidates.

(1) A judge or candidate may, except as prohibited by law:

(a) at any time,

(i) purchase tickets for and attend political gatherings;

(ii) identify himself or herself as a member of a political party; and

(iii) contribute to a political organization;

(b) when a candidate for public election

(i) speak to gatherings on his or her own behalf;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy;

(iii) distribute pamphlets and other promotional campaign literature supporting his or her candidacy; and

(iv) publicly endorse or publicly oppose other candidates in a public election in which the judge or judicial candidate is running.

(2) A candidate shall not personally solicit or accept campaign contributions. A candidate may establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than one year before an election and no later than 90 days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

(3) Except as prohibited by law, a candidate for judicial office in a public election may permit the candidate's name: (a) to be listed on election materials along with the names of other candidates for elective public office, and (b) to appear in promotions of the ticket.

C. Incumbent Judges. A judge shall not engage in any political activity except (i) as authorized under any other provision of this Code, (ii) on behalf of measures to improve the law, the legal system or the administration of justice, or (iii) as expressly authorized by law.

D. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2(b) of the Rules of Professional Conduct.

JUSTICE HEIPLE, concurring:

First and foremost, Rule 67 and these canons of judicial ethics are intended as a working guide of conduct for judges and judicial candidates. They indicate areas of activity that are deemed to be within and without proper limits of judicial conduct. In between, of course, are uncertain areas which lack definition. What the canons seek is judicial conduct that is in keeping with the high calling of judicial office. They are not intended to facilitate the filing of casual or vindictive charges against judges or judicial candidates.

The application of these canons require a high measure of common sense and good judgment. Matters that are either minor in nature or susceptible to differing interpretations ought not result in charges being filed. Charges of misconduct should be limited to matters that are both clearly defined and commonly accepted as serious.

The canons have attempted to recognize that Illinois has an elective judiciary. As a practical matter, the Illinois judge must involve himself in matters political. That is to say, the judge or

candidate must be a participant in the system. A corollary of this activity is the public's right to know whom they are voting for. Realistically speaking, it is not enough for the judge or candidate to merely give name, rank and serial number as though he were a prisoner of war. Rather, the public has a right to know the candidate's core beliefs on matters of deep conviction and principle. While the candidate is not required to disclose these beliefs, he should neither be deterred nor penalized for doing so. In so doing, however, the judge or judicial candidate ought to refrain from stultifying himself as to his evenhanded participation in future cases. Rule 67 attempts to make that clear.

What fair-minded people seek in a judge is a person who will be fair and impartial and who will follow the law. Those considerations overshadow matters of nonjudicial ideology such as socialism, antivivisection, membership in the Flat Earth Society, an obsession with gender neutral language, or whatever. The matter of nonjudicial ideology is of direct and primary concern, of course, when judges begin to act as legislators rather than jurists. Judges who adhere to the rule that their conscience is their guide and that the law must accommodate their conscience are especially deserving of close scrutiny and concern. Under our Illinois constitutional scheme, however, it is the voters who are to make that call, not a governmental prosecutorial body or an association of lawyers.

JUSTICE McMORROW, dissenting:

I dissent from the adoption of certain portions of new Rule 67 of the Code.

At the time of this writing, Illinois elects its judges. Irrespective of the merits or demerits of the elective process, it is essential to the justice system that judges be "independent, fair, and competent" so as to honor the public trust placed in them by virtue of their position. The purposes of the Code of Judicial Conduct are set forth in the Preamble to the Code. That Preamble, as amended, *inter alia*, provides:

> "Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all provisions of this code are precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system."

In this Code of Judicial Conduct, the Supreme Court of Illinois has set the standard by which judges are to be guided in their professional conduct. In my opinion, these standards should be high, and should be in keeping with the principles espoused in the Preamble. They are the guidelines which tell judges in this State in what activities they may or may not participate. The primary goal of the Code should be the attainment of a fair and impartial judiciary.

Today, in adopting certain amendments to Rule 67, the majority apparently wishes to accommodate the elective process to which judges are presently subjected. In so doing, the majority has substantially broadened the political activity in which judges may participate. For example, by deleting certain prohibitions which appeared in Rule 67 prior to the amendments, a judge may now *at any time* attend political gatherings, may make unlimited contributions to a

political organization, may identify himself or herself as a member of a political party, or may purchase tickets for political dinners or other functions. Rules 67(B)(1)(a)(i), (B)(1)(a)(ii), (B)(1)(a)(iii).

However, our prior Rule 67 was not unduly restrictive. Indeed, no hardship to judges under the former rule has been demonstrated, nor has there been any hue or cry for the changes which have been adopted. I am unaware of any need for judges to make unlimited contributions to a political party, to attend political gatherings, or to identify their political party allegiance. On the contrary, upon election to judicial office, judges are to be impartial; they are to be unbiased with respect to race, gender, and political party affiliation. Upon election, judges should no longer be Democrats or Republicans. Rather, judges are elected to apply the rule of law without respect to political organization affiliation. Although I recognize the need to solicit political organizational support at the time a candidate is seeking election to the judiciary, or at such time as a judge is seeking retention, I am particularly disturbed by the amendments' allowance of a judge to engage in the political activities permitted by these amendments *at any time*.

I submit that the new rule "abandon[s] several important ethical standards that uphold the independence and dignity of judicial office" and will surely cause severe problems in the public perception of judicial candidates. (Report of the Committee on Judicial Performance and Conduct of the Lawyers' Conference of the Judicial Administration Division of the American Bar Association on the Final Draft of the Model Code of Judicial Conduct 28 (1990) (hereinafter Report of the Committee on Judicial Performance).) In my view, the new standards of the rule are too permissive with respect to the political activities of judicial candidates. The increased permissiveness in judicial candidates' political activities fosters a misguided over-politicization of the judicial election process in this State. In my judgment the time and efforts of the Illinois Supreme Court might be better expended by addressing the myriad of problems confronting the justice system, rather than considering and adopting amendments which allow judges to participate in additional political activity. I dissent from the adoption of these amendments because they are imprudent, unnecessary, and lend themselves to abuse.

In addition, I cannot agree with the majority's new view of the appropriate scope of a judicial candidate's public comment on matters that may or are likely to come before the court, provided the candidate does not "make statements that commit or appear to commit the candidate with respect to cases, controversies or issues within cases that are likely to come before the court." (Rule 67(A)(3)(d)(i).) Ultimately, the new Rule is short-sighted because it places candidates for judicial office in an unseemly position where they may feel compelled to "pander" for votes by publicly adopting views which appear popular to the electorate. See Report of the Committee on Judicial Performance at 31.

The Commentary indicates that this amendment was adopted in response to the decision of the Federal court in *Buckley v. Illinois Judicial Inquiry Board* (7th Cir. 1993), 997 F.2d 224. In that case, the Seventh Circuit Court of Appeals held unconstitutional the portion of our rule that forbids a judicial candidate from "announc[ing] his views on disputed legal or political issues." (134 Ill. 2d R. 67(B)(l)(c).) The Federal court concluded that this "announcement" prohibition invaded a candidate's constitutional rights, because it "reache[d] far beyond speech that could reasonably be

interpreted as committing the candidate in a way that would compromise his impartiality should he be successful in the election." *Buckley*, 997 F.2d at 228.

It is indisputable that the constitutional guarantee of freedom of speech must be balanced against the right of the public to a judiciary which will decide the issues presented to it in the courtroom setting, on the basis of the facts and applicable law. A judicial candidate's right to free speech may be restricted where a compelling State interest is present which counterbalances the candidate's ability to speak freely. The integrity and impartiality and independence of the judiciary is, in my opinion, such a compelling State interest to which deference should be paid.

The key words in the amendment which now appear in Rule 67(A)(3)(d)(i) are "commit or appear to commit." These words are subject to varying interpretations and, I submit, are unnecessarily too broad to cure the fault found by the Federal court in the *Buckley* case. I question whether the amendment permitting a judge to speak on issues which may come before the court, provided the judge uses the magic words that the judge "is not committing" will be more problematic than the rule was prior to this amendment.

I also find disturbing the Commentary to the amendments to the effect that a judge or judicial candidate may respond to "false information concerning a judicial candidate [that] is made public." (Rule 67, Committee Commentary.) The Report of the Committee on Judicial Performance stated the following with regard to this provision:

> "This new expansion of free speech for judges who might be tempted to come to the aid of another judge or judicial candidate who has been the subject of criticism in a political campaign is totally without merit. There is no reason for a judge to become involved as a spokesperson or in any other capacity for another judge who has been publicly maligned. Publicly 'correcting' what the judge regards as a misstatement of fact in a judicial campaign is one of the acts presently prohibited by the existing Code, and it should continue to be prohibited.
>
> Most issues of 'fact' in the context of judicial elections are, at best, mixed issues of fact and opinion and at worst are pure issues of opinion. Thus, the 'narrow' exception anticipated by the draftspersons would, in reality, become a large loophole.
>
> The new provision would put enormous pressure on judges to become actively involved in campaigns of other judges or candidates." Report of the Committee on Judicial Performance at 5-6.

I agree with these comments from the Report of the Committee on Judicial Performance regarding this new amendment to Rule 67.

In my opinion, public perception of a fair and impartial judiciary is diminished by adoption of the amendments to which I have made reference. Because the majority permits potential further politicization of the Illinois judiciary by adoption of the above-referenced amendments, I respectfully dissent.

Adopted December 2, 1986, effective January 1, 1987; amended April 20, 1987, effective August 1, 1987; amended August 6, 1993, effective immediately; amended March 24, 1994, effective immediately.

Committee Commentary

This canon regulates the extent to which a judicial officer may engage in political activity. Canon 7 adopts as its foundation the provisions of Canon 5 of the ABA Model Code of Judicial Conduct, which was adopted by the ABA in 1990.

Paragraph 7A(1). A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by paragraph 7A(1) from making the facts public.

Subparagraph 7A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as State's Attorney, which is not "an office in a political organization."

Subparagraph 7A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket.

Subparagraph 7A(1)(d). The ABA provisions that prohibit the following activities were deleted: attending political gatherings (5A(1)(d) of ABA), making contributions to political organizations or candidates (5A(1)(e)), and purchasing tickets for political party dinners or other functions (5A(1)(e)). These provisions were deleted because the ABA provisions adopted in subparagraph 7B(1)(a) were modified to authorize all judges and candidates to engage in such activities at any time. However, the prohibition on the solicitation of funds for, or paying an assessment to, a political organization or candidate, is adopted and renumbered as subparagraph (d).

Subparagraph 7A(3)(a). Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

Subparagraph 7A(3)(d). The ABA clause prohibiting "pledges and promises of conduct in office," found in Canon 5A(3)(d) of the Model Code (which was similar to the language of Canon 7B(1)(c) of our previous rules on political conduct) was deleted. This change was made to clarify the limitations of the rule (see *In re Buckley* (Ill. Cts. Comm'n Oct. 25, 1991), No. 91-CC-1), which gave a broader construction to the rule. Subparagraph 7A(3)(d) prohibits a candidate for judicial office from making statements that commit or appear to commit the candidate with respect to cases, controversies or issues within cases that are likely to come before the court. However, as a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also paragraph 3A(6), the general rule on public comment by judges. Subparagraph 7A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this provision prohibit an incumbent judge from making private statements to other judges or court personnel in the

performance of judicial duties. This subparagraph applies to any statement made in the process of securing judicial office. See also Rule 8.2 of the Rules of Professional Conduct.

The ABA Model Code of 1990 was modified to remove the provisions pertaining to candidates seeking appointment to judicial or other governmental office that are found in subsection B of Canon 5. Hence ABA subsections C, D and E were renumbered and are now subsections B, C and D of our Canon 7.

Paragraph 7B(1). This paragraph permits judges at any time to be involved in limited political activity. Subsection 7C, applicable solely to judges, would otherwise bar this activity.

Paragraph 7B(2). This paragraph is substantially identical to the Section 5C(2) of the 1990 ABA Model Code. The one difference is that the language prohibiting the candidates from personally soliciting publicly stated support is omitted to allow judicial candidates to appear before editorial boards of newspapers and other organizations. Paragraph 7B(2) permits a candidate to solicit publicly stated support, and to establish campaign committees to solicit and accept public support and reasonable financial contributions. At the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are reasonable under the circumstances. Though not prohibited, campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under subsection C of Canon 3.

Campaign committees established under Section 7B(2) should manage campaign finances responsibly; avoiding deficits that might necessitate post-election fund-raising, to the extent possible.

Paragraph 7B(3). This paragraph provides a limited exception to the restrictions imposed by paragraph 7A(1).

Subsection 7C. Neither subsection 7C nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government.

Rule 68

A judge shall file annually with the Clerk of the Illinois Supreme Court (the Clerk) a verified written statement of economic interests and relationships of the judge and members of the judge's immediate family (the statement).

As statements are filed in the Clerk's office, the Clerk shall cause the fact of that filing to be indicated on an alphabetical listing of judges who are required to file such statements. Blank statement forms shall be furnished to the Clerk by the Director of the Administrative Office of the Illinois Courts (the Director).

Any person who files or has filed a statement under this rule shall receive from the Clerk a receipt indicating that the person has filed such a statement and the date of such filing.

All statements filed under this rule shall be available for examination by the public during business hours in the Clerk's office in Springfield or in the satellite office of the Clerk in Chicago. Original copies will be maintained only in Springfield, but requests for examination submitted in

Chicago will be satisfied promptly. Each person requesting examination of a statement or portion thereof must first fill out a form prepared by the Director specifying the statement requested, identifying the examiner by name, occupation, address and telephone number, and listing the date of the request and the reason for such request. The Director shall supply such forms to the Clerk and replenish such forms upon request. Copies of statements or portions of statements will be supplied to persons ordering them upon payment of such reasonable fee per page as is required by the Clerk. Payment may be by check or money order in the exact amount due.

The Clerk shall promptly notify each judge required to file a statement under this rule of each instance of an examination of the statement by sending the judge a copy of the identification form filled out by the person examining the statement.

The contents of the statement required by this rule shall be as specified by administrative order of this court.

Effective March 15, 1970; amended April 1, 1986, effective August 1, 1986.

ADMINISTRATIVE ORDER

The verified statements of economic interests and relationships referred to in our Rule 68, as amended effective August 1, 1986, shall be filed by all judges on or before April 30, 1987, and on or before April 30, annually thereafter. Such statements shall also be filed by every person who becomes a judge, within 45 days after assuming office. However, judges who assume office on or after December 1 and who file the statement before the following April 30 shall not be required to file the statement due on April 30. The form of such statements shall be as provided by the Administrative Director of the Illinois Courts, and they shall include all information required by Rule 68 and this order, including:

1. Current economic interests of the judge and members of the judge's immediate family (spouse and minor children residing with the judge) whether in the form of stock, bond, dividend, interest, trust, realty, rent, certificate of deposit, deposit in any financial institution, pension plan, Keogh plan, Individual Retirement Account, equity or creditor interest in any corporation, proprietorship, partnership, instrument of indebtedness or otherwise. Every source of noninvestment income in the form of a fee, commission, compensation, compensation for personal service, royalty, pension, honorarium or otherwise must also be listed. No reimbursement of expenses by any unit of government and no interest in deferred compensation under a plan administered by the State of Illinois need be listed. No amounts or account numbers need be listed in response to this paragraph 1. **In listing his or her personal residence(s) in response to this paragraph 1, the judge shall not state the address(es).** Current economic interests shall be as of a date within 30 days preceding the date of filing the statement.

2. Former economic interests of the type required to be disclosed in response to numbered paragraph 1 which were held by the judge or any member of the judge's immediate family (spouse and minor children residing with the judge) during the year preceding the date of verification. Current economic interests listed in response to numbered paragraph 1 need not be listed. No

amounts or account numbers need be listed in response to this paragraph 2. **In listing his or her personal residence(s) in response to this paragraph 2, the judge shall not state the address(es).**

3. The names of all creditors to whom amounts in excess of $500 are owed by the judge or members of the judge's immediate family (spouse and minor children residing with the judge) or were owed during the year preceding the date of verification. For each such obligation there is to be listed the category for the amount owed as of the date of verification and the maximum category for the amount of each such obligation during the year preceding the date of verification of the statement. The categories for reporting the amount of each such obligation are as follows:

(a) not more than $5,000;

(b) greater than $5,000 but not more than $15,000;

(c) greater than $15,000 but not more than $50,000;

(d) greater than $50,000 but not more than $100,000;

(e) greater than $100,000 but not more than $250,000; and

(f) greater than $250,000.

Excluded from this requirement are obligations consisting of revolving charge accounts, with an outstanding liability equal to or less than $5,000.

4. The name of any individual personally known by the judge to be licensed to practice law in Illinois who is a co-owner with the judge or members of the judge's immediate family (spouse and minor children residing with the judge) of any of the economic interests disclosed in paragraphs 1 and 2, and the name of any person who has acted as a surety or guarantor of any of the obligations required to be disclosed in paragraph 3.

5. A list of every office, directorship and salaried employment of the judge and members of the judge's immediate family (spouse and minor children residing with the judge). Exclude unsalaried positions in religious, social or fraternal organizations, and honorary positions.

6. Pending cases in which the judge or members of the judge's immediate family (spouse and minor children residing with the judge) are parties in interest and, to the extent personally known to the judge, pending cases in which a party is an economic entity in which the judge or any member of the judge's immediate family has an interest. Cases in which a judge has been sued in the judge's official capacity shall not be included.

7. Any fiduciary position, including executorships and trusteeships of the judge or members of the judge's immediate family (spouse and minor children residing with the judge).

8. The name of the donor and a brief description of any gifts received by the judge or members of the judge's immediate family (spouse and minor children residing with the judge). Gifts of transportation, food, lodging or entertainment having a value in excess of $250 must be reported. All other gifts having a value in excess of $100 must be reported. Gifts between the judge and the judge's spouse, children, or parents shall not be reported.

9. Any other economic interest or relationship of the judge or of members of the judge's immediate family (spouse and minor children residing with the judge) which could create a conflict

of interest for the judge in the judge's judicial capacity, other than those listed in numbered paragraphs 1 to 8 hereof.

Prior to the first Monday in March of each year the Director shall inform each judge by letter of the requirements of this amended rule. The Director shall similarly inform by letter each person who becomes a judge of the requirements of the rule within 10 days of such person assuming office. The Director shall include with such letter instructions concerning the required statements, two sets of the statement forms, and one mailing envelope preaddressed to the Clerk. **The Clerk shall redact personal residence and e-mail addresses contained in any statement filed pursuant to Supreme Court Rule 68.** The letter, instructions, and statements shall be in substantially the form provided in the Article I Forms Appendix.

Adopted by Order Entered April 1, 1986; order amended April 20, 1987, effective August 1, 1987; order amended December 30, 1993, effective January 1, 1994; order amended December 1, 1995, effective immediately; order amended September 23, 2005, effective immediately; order amended June 22, 2017, eff. July 1, 2017; amended May 17, 2019, eff. immediately.

Rules 69-70. Reserved

Rule 71. Violation of Rules

A judge who violates Rules 61 through 68 may be subject to discipline by the Illinois Courts Commission.

Effective March 15, 1970; amended effective October 1, 1971; amended June 24, 1976, effective July 15, 1976; amended December 2, 1986, effective January 1, 1987.

Rules 72-75. Reserved

Rule 76. Military Service of Judges

(a) Military Service During War. A judge or associate judge may serve for a period of no more than 12 months in the state militia or the armed forces of the United States when called into active military service during war between the United States and a foreign government. The judge or associate judge's military pay may be supplemented for the first 30 days with full pay and, thereafter, in an amount necessary to bring his or her total salary, inclusive of base military pay, to the level earned at the time he or she was called to service. After the 12-month period, a judge or associate judge who remains on active duty may request from the Supreme Court of Illinois an extension of the 12-month period.

(b) Reserve or Guard Training. A judge or associate judge who is a commissioned reserve officer or a reserve enlisted in the United States military or naval service or a member of the National Guard may serve on all days during which they are engaged in training ordered under the provisions of the United States military or naval training regulations for such personnel when

assigned to active or inactive duty. Training shall be with full pay, not to exceed 30 days in each year.

(c) Benefits During Military Service. During periods of active military service, a judge or associate judge may be entitled to continued health insurance and other existing benefits, including retirement privileges. For purposes of computing whether a judge or associate judge may be entitled to retirement, a period of active military service shall be deemed continuous service in the office of said judge or associate judge.

(d) Resumption of Judicial Duties. A judge or associate judge terminating active military service shall immediately enter upon his or her judicial duties for the unexpired portion of the term for which he or she was elected or appointed.

(e) Term of Office. In the event that the term of office of a judge or associate judge shall expire during such period of active military service, the office shall be filled by election or appointment as may be required by law; provided, however, that a supreme, appellate or circuit judge in active military service shall have the right to file a declaration of candidacy and run for retention of his or her judicial seat, and an associate judge in active military service shall have the right to file a request for reappointment to his or her judicial seat.

(f) Definitions.

(1) The term "active military service" as used in this rule shall signify active duty in the Illinois defense force or federal service in training or on active duty with any branch of the Army of the United States, the United States Navy, the United States Air Force, the Marine Corps of the United States, the Coast Guard of the United States, and service of all officers of the United States Public Health Service detailed by proper authority for duty either with the army or the navy, and shall include the period during which a judge or associate judge in military service is absent from duty on account of sickness, wounds, leave, or other lawful causes.

(2) The term "period of active military service" as used in this rule shall begin with the date of entering upon active military service and shall terminate with death or the date immediately next succeeding the date of release or discharge from active military service or upon return from active military service, whichever shall occur first.

Effective July 1, 1971; amended May 28, 2003, effective immediately, amended June 6, 2003, effective immediately.

Committee Comments

(July 1,1971)

This rule was adopted pursuant to the authority granted in section 13(b) of article VI of the new Illinois Constitution to prescribe the periods of time that a judge or associate judge may serve in the State militia or armed forces of the United States without becoming disqualified from serving as a judge or associate judge.

Rules 77-85. Reserved

MANDATORY ARBITRATION

Introductory Comments

Objectives

The Committee, from its inception, was duly aware of the formidability of its undertaking in the light of the novelty to the Illinois bar of the concept as well as the procedure for the conduct of nonbinding court-annexed arbitration as a method for dispute resolution. It finds, even at this date, approximately one year after the effective date of the enabling legislation, after the publication of numerous articles, the consideration of proposed rules by three major bar associations and public hearings, that the vast majority of the Illinois bar is unaware of the existence of this act and the imminence of this procedure as an integral part of the State judicial system.

The clarity, the reasonableness and the fairness of the rules to be recommended were a foremost consideration by the Committee to address both the fact of the foregoing novelty as well as the apprehension usually attendant to the introduction of a new procedure to be learned and put into practice. Equally if not more so, was the Committee dedicated to achieving a product worthy of acceptance and promulgation by this court.

At the time of our appointment, there were in effect in approximately 16 jurisdictions rules for the conduct of mandatory arbitration programs, any set of which conceivably could have served as a viable model for adoption and use in Illinois. However, the focus of our effort in relation to a set of specific rules was to recommend that which would induce support from all affected sectors of the bar and the public, and which would manifest itself as a feasible vehicle for an early economical and fair resolution of monetary disputes.

Toward these ends, it was our intention in the conduct and course of deliberations to obtain a product refined from the use and experience of the full panoply of models in existence and that of Pennsylvania in particular.

Background and Sources

When the Committee began its deliberations, there were among its members four judges who had previously served on a Judicial Conference Study Committee, whose recommendations served as the basis for the present mandatory Arbitration Act. These four judges, as a result of the prior study had available to them for use in the work of this Committee a considerable bank of knowledge of existing arbitration systems. A national conference on mandatory arbitration sponsored by the National Institute for Dispute Resolution held in Washington, D.C., May 29-31, 1985, provided the chair of this Committee with a further opportunity to discuss the development of these programs with representatives of other jurisdictions.

To enable those members of this Committee who had not served on the Study Committee to become equally informed, a visit was arranged for them to attend and observe the operation of the

mandatory arbitration program at Philadelphia, Pennsylvania, and to meet with judicial and administrative personnel so engaged. For two days-December 9 and 10, 1985-several members of the Committee, State Senator Arthur Berman and four members of the Chicago bar, knowledgeable in the field of voluntary arbitration, attended actual hearings being conducted at the Arbitration Center and meetings with supervisory judges and administrators. On December 10 a round-table discussion was arranged for our contingent with 14 practitioners of Philadelphia, representing plaintiff and defense bars, insurance carriers and the metropolitan transit system. Without exception those members of the Committee who had not previously been knowledgeable of this process, as well as the other attendees from Illinois, were imbued with enthusiasm for the prospect of a similar program available to Illinois and immensely impressed with the apparent effectiveness as well as the wide-scale acceptance of this procedure in Philadelphia.

In addition to the Philadelphia on-site study by members of this Committee, its chair and member Judge Harris Agnew, accompanied by staff attorney James Woodward, on a later occasion visited four other less populous counties of Pennsylvania to study the use and operation of their mandatory arbitration programs. These visits provided models of local rules and the opportunity to interview judges and practitioners involved as well as to learn their evaluations of the effectiveness of rules in place.

The Committee's chair met with the supervising judge, the administrator and attorney practitioners in the arbitration program at Passaic County, New Jersey, and then repeated this scenario at Pittsburgh. On a later occasion the chair visited with the administrator of the King County (Seattle), Washington, arbitration program and one of its leading practitioners to discuss the effectiveness of their local and statewide rules.

It was uniformly reported to this Committee, from those thoroughly experienced with this procedure, that a full hearing necessary to arrive at award could be achieved in less than three hours. Reports from several jurisdictions were that a full hearing usually required even less than two hours to completion. It was feasible to expect completion of a three-day, 12-person jury trial within that time via the arbitration procedure under similar rules.

The fairness of the rules governing these hearings is evidenced by the high rate of acceptance by litigants, the steady increase in the number of jurisdictions initiating these programs, and their proliferation among judicial districts within a jurisdiction once it has been initiated. The reliability and durability of existing programs are further evidenced by the relatively few amendments to the rules that have been adopted since their inception. When there has been amendment, it usually consisted of an increase in the monetary limit for arbitrability, which in itself attests to the acknowledgment of the effectiveness of their rules and this mechanism for dispute resolution.

By late summer of 1986, the Committee had reached a consensus for proposed rules for consideration by the general bar and interested members of the private and public sectors. A draft of these proposed rules was widely distributed and responses invited. The Illinois State Bar Association, the Chicago Bar Association and the Chicago Council of Lawyers were specially requested to invite appropriate committees of those associations to consider these rules and formulate responses. The Committee arranged and conducted two hearings, one in Chicago and the other in Springfield. At those hearings, representatives of these bar groups, of the judiciary,

and of major insurance carrier trade associations representing the membership of several hundred companies appeared to present their views relative to the draft.

Review of this draft by respected authorities among the judiciary in Philadelphia who served in supervisory positions relative to their arbitrary programs was supportive and complimentary.

Altogether, the review of the proposed draft and the responses received were highly supportive for its acceptance in that form. Nevertheless, the Committee saw fit to consider incorporating, in the rules, recommendations that appeared to have merit and to seek to clarify those provisions that seemed to elicit misunderstanding or confusion.

The last major inquiry by the Committee consisted of a meeting on December 12 sponsored by the National Institute for Dispute Resolution, with eight distinguished attorneys selected by the Committee, from out of State, and well informed in the conduct of mandatory arbitration proceedings in their jurisdictions. The inquiry at the meeting centered on the conduct of the hearing itself in an effort to refine the rules to the extent and in such form as would provide the broadest acceptance by all affected thereby.

Not the least of the Committee's efforts were the many meetings attended and the hundreds of hours of discussion and deliberation devoted to this undertaking.

As knowledgeable on this subject, if not more so, than any member of the Committee, Supreme Court Justice Howard C. Ryan, Liaison to the Committee, shared his knowledge and wisdom with us throughout the course of our deliberations. Constantly etched in our minds were his astute recommendations that we pay particular heed to the effectiveness of the Pennsylvania rules in the use of general guideline principles, leaving to the circuits the development of more detailed guidelines for local needs.

In aid of the objectives stated and from the foregoing sources, the following recommendations evolved.

Rule 86. Actions Subject to Mandatory Arbitration

(a) Applicability to Circuits. Mandatory arbitration proceedings shall be undertaken and conducted in those judicial circuits which, with the approval of the Supreme Court, elect to utilize this procedure and in such other circuits as may be directed by the Supreme Court.

(b) Eligible Actions. A civil action shall be subject to mandatory arbitration if each claim therein is exclusively for money in an amount or of a value not in excess of the monetary limit authorized by the Supreme Court for that circuit or county within that circuit, exclusive of interest and costs.

(c) Local Rules. Each judicial circuit court may adopt rules for the conduct of arbitration proceedings which are consistent with these rules and may determine which matters within the general classification of eligible actions shall be heard in arbitration.

(d) Assignment from Pretrials. Cases not assigned to an arbitration calendar may be ordered to arbitration at a status call or pretrial conference when it appears to the court that no claim in the action has a value in excess of the monetary limit authorized by the Supreme Court for that circuit or county within that circuit, irrespective of defenses.

(e) Applicability of Code of Civil Procedure and Rules of the Supreme Court. Notwithstanding that any action, upon filing, is initially placed in an arbitration track or is thereafter so designated for hearing, the provisions of the Code of Civil Procedure and the rules of the Supreme Court shall be applicable to its proceedings except insofar as these rules otherwise provide.

Adopted May 20, 1987, effective June 1, 1987; amended December 30, 1993, effective January 1, 1994.

Committee Comments

Paragraph (a)

It is implicit from the authority granted to it by the enabling legislation and appropriate to its responsibility for the effective operation of the courts that the Supreme Court shall decide which, if any, circuit should undertake a mandatory arbitration program. Where available resources permit, and the benefits anticipated are determined, any other circuit, with the approval of the Supreme Court and by virtue of the authority of this rule, can elect to institute such program.

Paragraphs (b) and (c)

Examination of existing statutes and rules in jurisdictions with mandatory arbitration reveals that claims for a specific sum of money or money damages are the cornerstone for this form of disposition. Pennsylvania, by statute, limits this remedy to such civil matters or issues where the amount in controversy, exclusive of interest and costs, does not exceed a certain value and which do not involve title to real property. Within that broad spectrum, further limitation is authorized by rule of court. Most jurisdictions expressly exclude actions involving title to real property or equitable issues.

It was the consensus of the Committee that arbitrable actions should be limited by rule only to those matters involving a claim exclusively for money. Eligibility for arbitration, by the terms of the Act, could be more broadly interpreted. The less complex the issues, the less concern there need be for the level of experience or specialized practice of the arbitrators.

The present volume of cases in litigation potentially arbitrable under this rule, in many of the circuits, could quickly exhaust the resources that would be available to administer the program for all. For this reason, each circuit should be authorized, as is herein permitted, to further limit and define that class of cases, within the general class of arbitrability, that it may wish to submit to this program.

It could prove to be appropriate, in some circuits, until its requirements and resources dictate otherwise, to limit its program solely to actions within the monetary limit, in which jury demands have been filed. Obviously, considerable cost savings could be achieved if such matters could be resolved at a two or three hour hearing as compared to a two- or three-day trial to a jury.

The initial draft of the Committee excluded from eligible actions small claims as defined by Rule 281. The exclusion of such actions of insubstantial amounts is not unusual in arbitration jurisdictions. Although their inclusion in the conduct of hearings would appear to be an indiscriminate use of manpower and funding resources, the Committee considers that such

discretion best be left to the circuit. That court may determine that those small claims cases with jury demands should be arbitrable and thus susceptible to quick and early resolution.

If the amount of claimed interest and costs is determinable by the time of filing and constitutes an integral part of the claim, the amount of the demand, including such items, would determine eligibility for arbitration. If, however, interest and costs are determined by the arbitrators to be includable, and due and owing as of the date of the award, then the amount thereof may be added to the award even though by such addition the arbitrable limit is exceeded.

Paragraph (d)

This paragraph of the rule enables the court to order the matter to hearing in arbitration when it reasonably appears to the court that the claim has a value not in excess of the arbitrable limit although the prayer is for an amount or of a claimed value in excess thereof. Early skepticism on the part of the bar relative to the merits of this form of dispute resolution could serve to cause demands in an amount that would avoid assignment of the claim to an arbitration hearing. Some jurisdictions provide for an early conference call on all civil matters at which time arbitrability would be determined.

Philadelphia County enables the claim to be placed in the arbitration track at time of filing, at which time the date and time of hearing is assigned. The hearing date given is eight months from date of filing. Although the court in Philadelphia County may divert a case from the major case trial track to arbitration, that event is altogether infrequent. The Philadelphia bar has long recognized the benefits and advantages available in its arbitration program and do not see fit to avoid its process.

An undervaluation of the claim at the time of filing or by the court in diverting the claim to arbitration as a result of its undervaluation does not preclude the claimant from the opportunity to eventually realize its potential value. No party need accept as final the award of the arbitrators and any may reject the award and proceed on to trial in which no monetary limit would apply.

A claimant who believes he has a reasonable basis for having the matter removed from an arbitration track may move the court for such relief prior to hearing. Where there are multiple claims in the action, the court may exercise its discretion to determine whether all meet the requirements of eligibility for arbitration and if not whether a severance could be made of any or several without prejudice to the parties.

Paragraph (e)

The concern expressed by some reviewers in response to the initial draft as to whether or not the Code of Civil Procedure and the rules of the Supreme Court would apply to matters that are to be arbitrated caused the Committee to realize that some perceived this procedure as essentially *sui generis*. What we thought apparently went without saying, did not. To avoid any misconception in that regard, the Committee has adopted this part to the rule.

Rule 87. Appointment, Qualification and Compensation of Arbitrators

(a) List of Arbitrators. A list of arbitrators shall be prepared in the manner prescribed by a circuit rule. The list shall consist of a sufficient number of members of the bar engaged in the

practice of law and retired judges within the circuit in which the court is situated.

(b) Panel. The panel of arbitrators shall consist of three members of the bar, or such lesser number as may be agreed upon by the parties, appointed from the list of available arbitrators, as prescribed by circuit rule, and shall be chaired by a member of the bar who has engaged in trial practice for at least three years or by a retired judge. Not more than one member or associate of a firm or office association of attorneys shall be appointed to the same panel.

(c) Disqualification. Upon appointment to a case, an arbitrator shall notify the court and withdraw from the case if any grounds appear to exist for disqualification pursuant to the Code of Judicial Conduct.

(d) Oath of Office. Each arbitrator shall take an oath of office in each county or circuit in which the arbitrator intends to serve on an arbitration panel. The oath shall be in conformity with the form provided in Rule 94 herein and shall be executed by the arbitrator when such arbitrator's name is placed on the list of arbitrators. Arbitrators previously listed as arbitrators shall be relisted on taking the oath provided in Rule 94.

(e) Compensation. Each arbitrator shall be compensated in the amount of $100 per hearing.

Adopted May 20, 1987, effective June 1, 1987; amended December 3, 1997, effective January 1, 1998; amended March 1, 2001, effective immediately; amended January 25, 2007, corrected January 26, 2007, effective February 1, 2007.

Committee Comments

Paragraph (a)

Paragraph (a) is substantially modeled after Pennsylvania Rule 1302. The Committee, in its investigation of several programs in that jurisdiction, found that there were some, particularly at Pittsburgh and Philadelphia, where the arbitration lists were adequately filled by volunteers. In other counties, either by reason of the lack of enough volunteers or the view that this was an essential public service, all members of the bar were listed for such service. It is the Committee's recommendation that each circuit engaged in an arbitration program can best determine its method of utilizing its attorney resources. Retired judges are often interested and available for such service and should be considered eligible even though not then engaged in the practice of law.

Paragraph (b)

The Committee has learned of several methods extant for the appointment of arbitrators to hearing panels. Most frequently recommended is the method of random selection. Other methods include: appointment from the list in alphabetical order or in the order of arrival on signing-in on the hearing date. One jurisdiction selects three members with a combined experience of 10 years. The Committee believes that each circuit should determine its own method of appointment.

There also exist variations for the appointment of chairpersons for each panel. In some

jurisdictions and districts, the member with the longest number of years in practice becomes the chairperson. In Allegheny County (Pittsburgh) a special list is maintained as the roster for appointment of the chairperson of the panel. This list consists of those who are determined by the arbitration administrator to have the longest and most pertinent experience in the practice. Here again, rather than by specific rule, the Committee recommends that this subject be determined by the circuit.

The qualification for members of the panel other than the chairperson consists of their then being engaged in the practice of law or if the retired judge does not see fit to act as chairperson, he is otherwise eligible to serve as another member of the panel.

In our initial draft of proposed rules, we adopted the phrase "actively engaged in the practice of law." At the hearings held by the Committee, representatives of the Illinois bar raised questions as to the intended meaning of the words "actively engaged." Although Pennsylvania uses those terms as a condition of eligibility and for service, its rules and reports offer no interpretation of what would constitute active engagement in the practice and leaves the interpretation to each judicial district.

The meetings held with out-of-State attorney practitioners has produced the universal recommendation from them that we avoid wherever possible imprecise terms. They called to our attention that there will always be members of the bar whom they refer to as "technocrats," inclined to demand a precise as opposed to a reasonable interpretation. Accordingly and to avoid difficulty in the interpretation of what constitutes "actively engaged" we have omitted the word "actively" in the firm belief it adds nothing substantive to the purpose intended. Leading members of the Philadelphia and Pittsburgh bars fully endorse minimal requirements for qualification to serve on the panel other than that for the chairperson.

The Pennsylvania statewide rule requires that the chairperson be admitted to practice for a minimum of three years. We have determined to add the additional requirement of trial experience. Trial experience brings with it an understanding of the role of the arbiter in a trial setting as well as knowledge of the rules of evidence. Interviews conducted, and hearings held, disclose a prevalent and seemingly valid concern on the part of the practicing bar that arbitrators, particularly the chairperson, be fully conversant with established rules of evidence. This knowledge is more likely to facilitate an expedited hearing and acceptable results. By reason of their experience in this regard, retired judges would seemingly fit this requirement.

Presiding Judge Michael J. O'Malley, at Pittsburgh responding to an inquiry, expressed the following view.

> "Experienced trial attorneys serving as arbitrators are extremely valuable. Indeed, we attempt in Pittsburgh to have the chair of each three-member panel be an experienced lawyer. It would be even better if all three had extensive trial experience but it is not an absolute necessity." Letter to Judge Lerner dated April 22, 1986.

The majority of jurisdictions utilizing a single arbitrator require, as a minimum, five years' admission to the bar.

The following minimal qualifications for years of admission to practice for chairpersons were

adopted in the counties, other than Philadelphia, visited by the Committee: Allegheny 5, Bucks 4, Northampton 5, Lancaster 5 and Chester 10.

Although there were members of the Committee who preferred a five-year trial experience qualification for the chairperson, the concern expressed by some that certain circuits might be hard pressed to obtain sufficient volunteers brought about the three-year minimum stated in the rule.

The qualifications stated in this rule are intended to be minimal. Each circuit may opt to enlarge upon those stated herein both as to chairpersons and other members of the panel.

Paragraph (c)

No provision is made in these rules for a substitution of arbitrators or change of venue from the panel or any of its members. The remedy of rejection of an award and the right to proceed to trial is determined to be the appropriate response to perceived bias or prejudice on the part of any member of the panel or error by the panel in the determination of its award. Subdivision (c) requires an attorney who has been appointed to serve as arbitrator to disqualify himself or herself on a particular case if circumstances relating to the parties, their counsel, or the matter in controversy would appear to be grounds for such recusal under the Code of Judicial Conduct. A motion on that basis could be presented to the court to determine the existence of any basis for disqualification and for reassignment to another panel or the substitution of another panelist. Where one of the counsel has raised the question of bias or prejudice of a member of the panel, if that panelist is not replaced or a new panel made available, an award adverse to that counsel will likely be rejected.

Paragraph (d)

As is the case with Pennsylvania, we recommend an official form for this purpose, similar to that of the Pennsylvania rules.

Paragraph (e)

The fee recommended in this rule to be paid to arbitrators is consistent with the amounts now being paid as arbitrators' fees in other jurisdictions. It was the view of the Committee that the fee be standard throughout the circuits utilizing these services; the same level of competency and performance should be expected.

Rule 88. Scheduling of Hearings

The procedure for fixing the date, time and place of a hearing before a panel of arbitrators shall be prescribed by circuit rule provided that not less than 60 days' notice in writing shall be given to the parties or their attorneys of record. The hearing shall be held on the scheduled date and within one year of the date of filing of the action, unless continued by the court upon good cause shown. The hearing shall be held at a location provided or authorized by the court or remotely, including by telephone or video conference.

Adopted May 20, 1987, effective June 1, 1987; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Committee Comments

Each circuit engaged in a mandatory arbitration program is best suited to determine the scheduling of hearings to accommodate its case-flow needs and the availability of arbitrator personnel.

The Philadelphia program is eminently successful in achieving an efficient program-at the time it is filed, a case in the arbitration track is assigned a hearing date eight months from the date of filing. Philadelphia has a central facility styled "Arbitration Center," in an office building in the city center, a short distance from most other court facilities. The eight-month period has proved to be sufficient to enable the parties to complete their discovery and preparation for hearing. Most matters scheduled for arbitration are settled prior to hearing.

The time within which matters in arbitration should be heard is not intended to be a period of limitations but rather a reasonable expectation. Every jurisdiction studied, many with higher monetary limits for arbitrability, have reported that these cases can be heard within the period of one year without prejudice to the parties.

Experience dictates that the use of courthouse facilities provides a desirable quasi-judicial atmosphere and a ready access to the court for timely rulings. A centralized operation of the program provides greater efficiency in the use of arbitrator's and attorney's time. A central facility also results in better monitoring of the progress of a case diverted to arbitration.

Rule 89. Discovery

Discovery may be conducted in accordance with established rules and shall be completed prior to the hearing in arbitration. However, such discovery shall be conducted in accordance with Rule 222, except that the timelines may be shortened by local rule. No discovery shall be permitted after the hearing, except upon leave of court and good cause shown.

Adopted May 20, 1987, effective June 1, 1987; amended March 26, 1996, effective immediately.

Committee Comments

The rules for discovery are intended to provide the means to obtain fair and full disclosure of the facts; they are not intended to provide a weapon for abusive tactics. The Committee anticipates a good faith effort on the part of the bar to utilize discovery to an extent and in a manner consistent with the value and complexity of arbitrable claims.

If the amount of the claim is stated to have a value not in excess of $50,000, Supreme Court Rule 222 would apply. Note that the timelines provided in Supreme Court Rule 222(c) for full compliance may be amended by a local arbitration rule. Relief from any undue restrictions under the rule should readily be forthcoming from the court; preferably counsel will cooperate to meet their recognized requirements in that regard.

Our study has disclosed relatively little use of depositions for discovery and preparation for the mandatory arbitration hearing. Rather, there has been a more extensive use of interrogatories. We are not aware of the requirement of disclosure statements in the other jurisdictions as are required under our Rule 222. It may be that the content of the disclosure statements, if fully and fairly revealed, may make sufficient the limited number of interrogatories permitted. If the allowance of more interrogatories would obviate the need for taking one or more depositions, the cost savings alone would justify such alternative.

An early and timely disposition of arbitrable matters must be doomed by courts that are tolerant of late attention to discovery. Firmness of the courts in the implementation of this rule will help to insure the successful results that are available from this procedure.

Prohibiting discovery after award places a premium on as early, and as thorough, a degree of preparation as is necessary to achieve a full hearing on the merits of the controversy. Neither side should be encouraged to use this proceeding, *i.e.*, the hearing itself, merely as an opportunity to discover the adversary's case en route to an eventual trial.

If the lapse of time between an award and a requested trial is substantial or if in that period there has been a change in the circumstances at issue, additional discovery would appear to be appropriate and should be granted.

Rule 90. Conduct of the Hearings

(a) Powers of Arbitrators. The arbitrators shall have the power to administer oaths and affirmations to witnesses, to determine the admissibility of evidence and to decide the law and the facts of the case. Rulings on objections to evidence or on other issues which arise during the hearing shall be made by the chairperson of the panel.

(b) Established Rules of Evidence Apply. Except as prescribed by this rule, the established rules of evidence shall be followed in all hearings before arbitrators.

(c) Documents Presumptively Admissible. All documents referred to under this provision shall be accompanied by a summary cover sheet listing each item that is included detailing the money damages incurred by the categories as set forth in this rule and specifying whether each bill is paid or unpaid. If at least 30 days' written notice of the intention to offer the following documents in evidence is given to every other party, accompanied by a copy of the document, a party may offer in evidence, without foundation or other proof:

(1) bills (specified as paid or unpaid), records and reports of hospitals, doctors, dentists, registered nurses, licensed practical nurses and physical therapists, or other health-care providers;

(2) bills for drugs, medical appliances and prostheses (specified as paid or unpaid);

(3) property repair bills or estimates, when identified and itemized setting forth the charges for labor and material used or proposed for use in the repair of the property;

(4) a report of the rate of earnings and time lost from work or lost compensation prepared by an employer;

(5) the written statement of any expert witness, the deposition of a witness, the statement of a witness which the witness would be allowed to express if testifying in person or remotely, including by telephone or video conference, if the statement is made by affidavit or by certification as provided in section 1-109 of the Code of Civil Procedure;

(6) any other document not specifically covered by any of the foregoing provisions, and which is otherwise admissible under the rules of evidence.

The pages of any Rule 90(c) package submitted to the arbitrators should be numbered consecutively from the first page to the last page of the package in addition to any separate numbering of the pages of individual documents comprising such package. A template Notice of Intent Pursuant to Supreme Court Rule 90(c) is provided in the Article I Forms Appendix.

(d) Opinions of Expert Witnesses. A party who proposes to use a written opinion of any expert witness or the testimony of any expert witness at the hearing may do so provided a written notice of such intention is given to every other party not less than 30 days prior to the date of hearing, accompanied by a statement containing the identity of the expert witness, the expert's qualifications, the subject matter, the basis of the expert's conclusions, and the expert's opinion as well as any other information required by Rule 222(d)(6).

(e) Right to Subpoena Maker of the Document. Any other party may subpoena the author or maker of a document admissible under this rule, at that party's expense, and examine the author or maker as if under cross-examination. The provisions of the Code of Civil Procedure relative to subpoenas, section 2-1101, shall be applicable to arbitration hearings and it shall be the duty of a party requesting the subpoena to modify the form to show that the appearance is set before an arbitration panel and to give the time and place set for the hearing.

(f) Adverse Examination of Parties or Agents. The provisions of the Code of Civil Procedure relative to the adverse examination of parties or agents, section 2-1102, shall be applicable to arbitration hearings as upon the trial of a case.

(g) Compelling Appearance of Witness at Hearing. The provisions of Rule 237, herein, shall be equally applicable to arbitration hearings as they are to trials. The presence of a party may be waived by stipulation or excused by court order for good cause shown not less than seven days prior to the hearing. Remedies upon a party's failure to comply with notice pursuant to Rule 237(b) may include an order debarring that party from rejecting the award.

(h) Prohibited Communication. Until the arbitration award is issued and has become final by either acceptance or rejection, an arbitrator may not be contacted ex parte, nor may an arbitrator publicly comment or respond to questions regarding a particular arbitration case heard by that arbitrator. Discussions between an arbitrator and judge regarding an infraction or impropriety during the arbitration process are not prohibited by this rule. Nothing in this rule shall be construed to limit or expand judicial review of an arbitration award or limit or expand the testimony of an arbitrator at judicial hearing to clarify a mistake or error appearing on the face of an award.

(i) Remote Appearances. The provisions of Rule 241 herein shall be equally applicable to arbitration hearings. Aparty or witness may be allowed to appear remotely, including by telephone or video conference.

Adopted May 20, 1987, effective June 1, 1987; amended April 7, 1993, effective June 1, 1993; amended March 26, 1996, effective immediately; amended March 28, 2002, effective July 1, 2002; amended December 5, 2003, effective January 1, 2004; amended October 14, 2005, effective January 1, 2006; amended June 4, 2008, effective July 1, 2008; amended June 22, 2017, eff. July 1, 2017; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Committee Comments
(January 1, 2006)

Paragraph (h) is directed toward eliminating the problem of party or attorney use of information/feedback obtained during posthearing *ex parte* communication. Such communication could hinder the program goal of parties participating in good faith and could possibly influence the decision of the parties to accept or reject an award. This rule is not intended to restrict the ability of a party to communicate *ex parte* with a nonneutral party-arbitrator when used outside of court-annexed mandatory arbitration.

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

The conduct of the hearings, the outcome included, will substantially determine the regard and acceptance to be held by the legal community for this procedure as an effective method of dispute resolution for achieving a fair, early, economical and final result. For this reason, more perhaps than for any other of these rules, has the Committee devoted its attention to this rule. Meetings and interviews with out-of-State practitioners, judges and administrators were conducted with the greatest emphasis on the evidentiary aspect of the hearings.

Paragraph (a)

The authority and power of the arbitrators exist only in relation to the conduct of the hearing at the time it is held. Issues that may arise in the proceedings of the case prior, ancillary or subsequent to the hearing must be resolved by the court.

In some jurisdictions, including Pennsylvania, rulings on the evidence are to be made by a majority of the panel. Ohio has recently amended its rule to permit the chairperson to make such rulings. Practitioners, familiar with the practice in multiple-person panels, recommend that the ultimate authority reside with the chairperson. In practice one could reasonably expect the chairperson to consult with other members of the panel on difficult questions of admissibility.

Paragraph (b)

Several jurisdictions do not require hearings to be conducted according to the established rules of evidence.

New Jersey provides: "The arbitrator shall admit all relevant evidence and shall not be bound by the rules of evidence."

Ohio's statewide rules make no reference to the nature of the evidence admissible in mandatory arbitration hearings. Cuyahoga County (Cleveland), Hamilton County (Cincinnati) and Stark County (Canton) by local rules provide that the arbitrators shall be the judges of the relevancy and materiality of the evidence and "conformity to legal rules of evidence shall not be necessary."

The State of Washington rules leave to the discretion of the arbitrator the extent to which the rules of evidence will apply.

The States of Arizona, California, Minnesota, New York and Pennsylvania provide, as does this rule, for the application of the established rules of evidence with exceptions similar to those stated under paragraph (c).

It is the view of the Committee that the Illinois practitioner will enjoy a sense of security in that the established rules of evidence will apply to these hearings.

Paragraph (c)

All jurisdictions utilizing court-annexed arbitration have adopted rules substantially and conceptually similar to the provisions at paragraph (c) of this rule. The purpose for allowing presumptive admissibility of documents is to enable the parties to achieve the economy of time and expense available for the conduct of the hearing. The emphasis should be placed on substance and not form; the integrity of the evidence should be more meaningful than its formal method of introduction. The documents described in (c) are generally considered reliable and trustworthy for the purpose of admission. The documents that could be admitted under the general classification in (c)(6) could be photos, maps, drawings and blueprints, weather reports, business records and communications, and the like, so as to relieve the requirements of a foundational predicate for their admission.

The practice of the presumptive admission of documents of the type and nature described in the rule has stood the test of time and of experience in many thousands of hearings; one encounters

no reported criticism or suggestion for change.

Regardless of the presumptive admissibility of the documents, the arbitrators will be required to apply the tests under established rules of evidence otherwise relating to admissibility and credibility and to determine, fairly, the weight to be given such evidence. Otherwise, the purpose of this procedure to achieve a fair, economical and early disposition of the controversy must ultimately fail by virtue of the lack of an essential integrity to the hearing itself.

Practitioners may not assume that practice will tolerate the blanket submission of voluminous records, charts or entire depositions with the expectation that the panel must pore over these documents and attempt to sort out that part which may be relevant or material to the issues at hand. Nor should such burden be placed on opposing counsel when such documents have been provided by notice. It would not be inappropriate or unreasonable, on the part of the panel, if it were to reject such blanket submissions unless proffering counsel specifies the entries or statements therein having relevancy and materiality.

None of the documents eligible for admission without foundation may be so offered unless the intention to do so, and a copy thereof, has been provided to opposing counsel not less than 30 days prior to the hearing. That length of time should be sufficient to enable counsel to verify the authenticity of the document, if prior discovery has not already accomplished that purpose. The Committee is recommending a period of notice longer than any of the arbitration jurisdictions; many provide a 20-day notice and some as few as seven days. We recommend the longer period so that there is less reason for the parties to request a continuance.

If the period of notice given for the submission of documents for presumptive admission is the minimum provided by this rule, and opposing counsel, in the exercise of prudent practice finds need to submit a document in rebuttal, he should apply to the court for leave to do so, unless his adversary will stipulate to a submission in less time than is required by this rule. Under such circumstances the court, in its ruling, should be guided by the degree of diligence and preparation previously undertaken by both counsel.

Whenever possible, counsel should endeavor to avoid delay and needless expense by stipulating to the admission of documents where there is no reasonable basis for believing they will not and should not be admitted.

Paragraph (d)

It is intended under this paragraph to require disclosure of the identity of an opinion witness whose written opinion will be offered under the provisions of paragraph (c)(5) herein, or who will testify at the hearings; and to the extent required under Rule 222, his qualifications, the subject matter of his testimony, and the basis of conclusions and opinions as well as any other information required by Rule 222(d)(6). This information must be provided not less than 30 days prior to the scheduled date of hearing. The longer the period of notice provided to one’s adversary, the less justification there would be to delay the hearing by reason of a late and unexpected disclosure.

Paragraph (e)

Although existing practice in other jurisdictions indicates that the option provided under (e) is rarely exercised, opposing counsel is given the right to subpoena the maker of the document as an adverse witness, and examine that witness as if under cross-examination. This provision is not intended to act as a substitute for the right, under Rule 237, to require the production of a party at the hearing. In the event the maker sought to be served is not amenable to service of a subpoena, and provided further that counsel has been diligent in attempting to obtain such service, it would be incumbent on counsel to seek to bar its admissibility. Such motion should be made well in advance of the hearing date.

The Explanatory Note to Pennsylvania Rule 1305 states that if a member or author of the document is not subject to the jurisdiction of the court and cannot be subpoenaed, that document would not be presumptively admissible. The use of subpoena under this provision of the rule is rare and this problem does not appear to be one that has been bothersome to the practitioners. The Committee does not believe that there should be a hard and fast rule if such issue should arise but rather that it be decided on a case-by-case basis. This seems to be the prevalent view among practitioners of other jurisdictions. The materiality of the document to the issues should be a significant matter. The courts should also be alert to prevent the attempted use of this process by opposing counsel as an abusive tactic for delay and harassment.

Paragraphs (f) and (g)

Although these provisions of the Code of Civil Procedure and Supreme Court Rule 237 apply to trials, they should be equally applicable to hearings in arbitration. The Committee is advised that in actual practice it has been customary for counsel to arrange for the appearance of such witnesses by agreement.

A party who fails to comply with a Rule 237(b) notice to appear at a trial is subject to sanctions pursuant to Rule 219(c). Those sanctions may include an order debarring that party from maintaining a claim, counterclaim, etc. The 1993 amendment to Rule 90(g) is to make clear that a Rule 237(b) notice to appear at an arbitration hearing carries equivalent importance, such that a court may, in an appropriate case, debar a party who fails to comply from rejecting the award. The amendments also allow a party who received a notice to appear an opportunity to be excused in advance from appearing for good cause or by stipulation. For example, in a case where the party is willing to stipulate to the issue of liability and the only question which remains is damages, the party served with a Rule 237 notice may be excused by stipulation of the parties.

Rule 91. Absence of Party at Hearing

(a) Failure to be Present at Hearing. The arbitration hearing shall proceed in the absence of any party who, after due notice, fails to be present. The panel shall require the other party or parties to submit such evidence as the panel may require for the making of an award. The failure of a party to be present, either in person or by counsel, at an arbitration hearing shall constitute a waiver of the right to reject the award and a consent to the entry by the court of a judgment on the award. In the event the party who fails to be present thereafter moves, or files a petition to the court, to vacate the judgment as provided therefor under the provisions of the Code of Civil Procedure for the

vacation of judgments by default, sections 2-1301 and 2-1401, the court, in its discretion, in addition to vacating the judgment, may order the matter for rehearing in arbitration, and may also impose the sanction of costs and fees as a condition for granting such relief. For the purposes of this paragraph, being present encompasses appearing in person, by counsel, or remotely, including by telephone or video conference.

(b) Good-Faith Participation. All parties to the arbitration hearing must participate in the hearing in good faith and in a meaningful manner. If a panel of arbitrators unanimously finds that a party has failed to participate in the hearing in good faith and in a meaningful manner, the panel's finding and factual basis therefor shall be stated on the award. Such award shall be *prima facie* evidence that the party failed to participate in the arbitration hearing in good faith and in a meaningful manner and a court, when presented with a petition for sanctions or remedy therefor, may order sanctions as provided in Rule 219(c), including, but not limited to, an order debarring that party from rejecting the award, and costs and attorney fees incurred for the arbitration hearing and in the prosecution of the petition for sanctions, against that party.

Adopted May 20, 1987, effective June 1, 1987; amended April 7, 1993, effective June 1, 1993; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Committee Comments

Paragraph (a)

There is precedent for such a rule and its consequence in the rules of other jurisdictions. Cuyahoga County (Cleveland), Ohio, has long had a rule which provides that the failure of a party to appear at the hearing either in person or by counsel constitutes a waiver of his right to reject the award and demand trial and further operates as a consent to the entry of judgment on the award.

The Washington rules provide that a party who fails to participate at the hearing without good cause waives the right to a trial.

The court administrator of the Philadelphia Court of Common Pleas, Judge Harry A. Takiff, upon reviewing our initial draft, applauded the inclusion of this rule. Judge Takiff proposed to recommend the adoption of a like rule for the Pennsylvania arbitration programs.

The enactment, by the legislature, establishing the procedure of mandatory court-annexed arbitration as an integral part of the juridical process of dispute resolution and the promulgation of these rules to implement such legislation compels the conclusion that its process must be utilized in arbitrable matters either to finally resolve the dispute or as the obligatory step prior to resolution by trial. To permit any party or counsel to ignore the arbitration hearing or to exhibit an indifference to its conduct would permit a mockery of this deliberate effort on behalf of the public, the bar and judiciary to attempt to achieve an expeditious and less costly resolution of private controversies.

A party who knowingly fails to attend the scheduled hearing, either in person or by counsel, must be deemed to have done so with full knowledge of the consequences that inhere with this rule. Where the failure to attend was inadvertent, relief may be available to the party under the

provisions of the Code of Civil Procedure, sections 2-1301 or 2-1401, upon such terms and conditions as shall be reasonable. See Ill. Ann. Stat., ch. 110, pars. 2-1301, 2-1401, Historical & Practice Notes (Smith-Hurd 1983); also *Braglia v. Cephus* (1986), 146 Ill. App. 3d 241, 496 N.E.2d 1171.

Paragraph (b)

Prior to the adoption of these sanctions, there were complaints by arbitrators that some parties and lawyers would merely attend but refuse to participate in arbitration. This paragraph was adopted to discourage such misconduct.

The arbitration process, and this rule in particular, was not intended to force parties to settle cases. Settlement, by definition, must be voluntary and not compelled. However, mandatory arbitration is a dispute resolution process under the auspices of the court. Parties and lawyers must not be allowed to abuse the arbitration process so as to make it meaningless.

Arbitration must not be perceived as just another hurdle to be crossed in getting the case to trial. Good-faith participation, as required by this rule, was therefore intended to assure the integrity of the arbitration process.

In drafting Rule 91(b), the committee surveyed the experience of other States, drawing particularly on similar requirements for good-faith participation in the mandatory arbitration rules of Arizona, California and South Carolina.

Rule 92. Award and Judgment on Award

(a) Definition of Award. An award is a determination in favor of a plaintiff or defendant.

(b) Determining an Award. The panel shall make an award promptly upon termination of the hearing. The award shall dispose of all claims for relief. The award may not exceed the monetary limit authorized by the Supreme Court for that circuit or county within that circuit, exclusive of interest and costs. The award shall be signed by the arbitrators or the majority of them. A dissenting vote without further comment may be noted. Thereafter, the award shall be filed immediately with the clerk of the court, who shall serve notice of the award, and the entry of the same on the record, to other parties, including any in default.

(c) Judgment on the Award. In the event none of the parties files a notice of rejection of the award and requests to proceed to trial within the time required herein, any party thereafter may move the court to enter judgment on the award.

(d) Correction of Award. Where the record and the award disclose an obvious and unambiguous error in mathematics or language, the court, on application of a party within the 30-day period allowed for rejection of an award, may correct the same. The filing of such an application shall stay all proceedings, including the running of the 30-day period for rejection of the award, until disposition of the application by the court.

(e) Costs. Costs shall be determined by the arbitration panel pursuant to law. The failure of the arbitration panel to address costs shall not constitute a waiver of a party’s right to recover costs

upon entry of judgment.

Adopted May 20, 1987, effective June 1, 1987; amended December 30, 1993, effective January 1, 1994; amended Dec. 5, 2016, eff. Jan. 1, 2017.

Committee Comments

Paragraph (b)

The most efficient use of panels would require that a sufficient number of matters for hearing be assigned to them for the date of service. It has been the experience at Philadelphia, and other counties of Pennsylvania, that their panels will conduct two or more full hearings on the assigned date of service. The form of the award proposed in Rule 94 is modeled after the official form of Pennsylvania, in its Rule 1312. The Committee recommends that no findings of fact or conclusions of law be required of the panel to be stated in its award. This is the accepted practice in Pennsylvania.

Paragraph (c)

Only the court may enter the judgment in a pending action. Unless the parties stipulate to dismiss the cause after the hearing and award, it is incumbent on a party to move the court to enter judgment after the 30-day period allowed for rejection at Rule 93 herein.

Rule 93. Rejection of Award

(a) Rejection of Award and Request for Trial. Within 30 days after the filing of an award with the clerk of the court, and upon payment to the clerk of the court of the sum of $200 for awards of $30,000 or less or $500 for awards greater than $30,000, any party who was present at the arbitration hearing, either in person or by counsel, may file with the clerk a written notice of rejection of the award and request to proceed to trial, together with a certificate of service of such notice on all other parties. The filing of a single rejection shall be sufficient to enable all parties except a party who has been debarred from rejecting the award to proceed to trial on all issues of the case without the necessity of each party filing a separate rejection. The filing of a notice of rejection shall not be effective as to any party who is debarred from rejecting an award. For the purposes of this paragraph, being present encompasses appearing in person, by counsel, or remotely, including by telephone or video conference.

(b) Arbitrator May Not Testify. An arbitrator may not be called to testify as to what transpired before the arbitrators and no reference to the fact of the conduct of the arbitration hearing may be made at trial.

(c) Waiver of Costs. Upon application of a poor person, pursuant to Rule 298, herein, the sum required to be paid as costs upon rejection of the award may be waived by the court.

Adopted May 20, 1987, effective June 1, 1987; amended April 7, 1993, effective June 1, 1993; amended December 3, 1996, effective January 1, 1997; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Committee Comments

Paragraph (a)

Delaware and New Jersey rules relative to arbitration programs expressly provide that the sole remedy of a party unwilling to accept the arbitration award is to file a rejection and to proceed on to trial. It is the Committee's view that this should be the interpretation applied by the courts with regard to proceedings after award.

Even under the Illinois Uniform Arbitration Act, section 112, it has been interpreted by the Illinois Supreme Court that an arbitration award may not be set aside, upon application to a court, for the arbitrator's errors in judgment or mistakes of law or fact. (*Garner v. Ferguson* (1979), 76 Ill. 2d 1, 389 N.E.2d 1181.) Under this section of the U.A.A., a party may apply to the court to vacate the award where the award was procured by corruption, fraud or other undue means; or that an arbitrator was guilty of misconduct prejudicing the rights of any party; or the arbitrators exceeded their powers. The Committee urges the interpretation that such alleged conduct should be addressed to the court for redress in a petition independent of the course of the proceedings in the action subsequent to the award; that the sole remedy in relation to the award, as an intermediate mechanism to resolve the dispute, should be to avail oneself of the right to a trial. The enabling act of Illinois expressly provides that the Illinois Uniform Arbitration Act shall not apply to these mandatory arbitration proceedings.

The 1981 official Explanatory Note to Pennsylvania Rule 1308 states:

> "The Rules do not continue the practice of petitioning to set aside an award for corruption or misbehavior. Hearings or depositions on the petition proceedings could delay the proceedings. Rule 1311(b) creates quasi-judicial immunity for the arbitrators with respect to their official actions and they cannot be called to testify. As a practical matter, if the fraud or corruption were proved, remand and the appointment of a new panel could be the only relief. *Trial de novo is preferable since it expedites the proceedings. The court would of course have the power to punish the attorney-arbitrators involved for any professional misconduct that could be proved*." (Emphasis added.) (Our recommended Rule 93(b) incorporates the exact language of Pennsylvania Rule 1311(b).)

Only a party who has attended the hearing in person or by counsel shall have the right to reject the award without regard to the basis for such rejection. The filing of a rejection and request for trial will permit any other party, whose interest has not been otherwise adjudicated, to participate in the trial.

A party who fails to appear at the hearing, although thereby deemed to have waived the right to reject the award, may nevertheless participate in a trial of the cause upon rejection of the award by any other party, provided a judgment has not been entered against him on the award and the judgment has not been vacated.

The assessment of the fee of $200 on the party who files the rejection is an item of cost consistent with the authorization provided therefor by the enabling legislation and is consistent with similar costs imposed in other jurisdictions in relation to the right to proceed further to a trial.

This sum amounts to a small measure of the concomitant cost to the public for the conduct of the trial itself and would appear appropriate as an imposition on a party who has already been provided with a full hearing forum to resolve the dispute.

The Committee is unable to reach a consensus on the question of recommending a specific rule on whether or not the $200 fee should be recoverable as a taxable cost. Pennsylvania, as does New York and Ohio, provides by rule that the costs assessed on the rejecting party shall apply to the cost of arbitrators fees and shall not be taxed as costs or be recoverable in any proceeding. The sum of $200 is the same amount imposed by Philadelphia County's rule on a party requesting trial after an award. Other jurisdictions, on the other hand, provide that such fee is recoverable and may be taxed as costs. If clarity in this regard requires a definitive rule, it is the Committee's preference that the rule be stated similarly to that of Pennsylvania; to wit, the sum so paid to the clerk shall not be taxed as costs or recoverable in any proceeding.

Many jurisdictions authorize fee and cost sanctions to be imposed on parties who fail to improve their positions at the trial after hearing. It is hoped that the quality of the arbitrators, the integrity of the hearings and the fairness of the awards will keep, to a minimum, the number of rejections. Both the Pittsburgh and Philadelphia programs, in Pennsylvania, are prime examples of effective arbitration systems without the use of cost and fee sanctions. Until such time as it becomes evident that there is an abusive use of the right of rejection, the Committee proposes to rely on the integrity of practitioners and their clients to abide a fair decision of the arbitrators. Abuse of this process may be dealt with under existing disciplinary and remedial measures.

In *Campbell v. Washington* (1991), 223 Ill. App. 3d 283, the court interpreted Rule 93 as providing that a party's right to reject an award is preserved when either the party or its attorney appears at the arbitration hearing. Therefore, the court held a trial court could not enter an order requiring forfeiture of the right of rejection as a sanction for failure of a party to appear pursuant to notice. The 1993 amendment to Rule 93 makes this rule consistent with other rules (for example, Rules 90(g) and 91(b)) that allow a court to enter an order debarring a party from rejecting the award. The filing of a rejection by a party who is or has been debarred from rejecting is ineffective even if the party was present at the arbitration hearing in person or by counsel.

Paragraph (b)

The majority of jurisdictions prohibit any reference in a subsequent trial to the fact that an arbitration proceeding was held or that an award was made; arbitrators are not permitted to testify regarding the conduct at the hearing. In addition, several of the jurisdictions, California and New Jersey in particular, prohibit recording of the arbitration proceedings or the use of any testimony taken at the hearing at a subsequent trial. However, where a recording of testimony at the hearing is not prohibited such testimony could be used at trial if otherwise admissible under the established rules of evidence of that jurisdiction.

Paragraph (c)

In some jurisdictions where costs such as herein imposed are waived, it is provided in their

rules that such costs may be imposed thereafter as an offset in the event a sufficient sum is recovered by the indigent party upon the trial of the cause.

Rule 94. Form of Oath, Award and Notice of Award

The oath, award of arbitrators, and notice of award shall be in substantially the same form as the template provided in the Article I Forms Appendix.

Adopted May 20, 1987, effective June 1, 1987; amended March 1, 2001, effective immediately; amended October 20, 2003, effective December 1, 2003; amended June 22, 2017, eff. July 1, 2017.

Rule 95. Form of Notice of Rejection of Award

The notice of rejection of the award shall be in substantially the same form as the template provided in the Article I Forms Appendix.

Adopted May 20, 1987, effective June 1, 1987; amended June 22, 2017, eff. July 1, 2017.

Rules 96-98. Reserved

Rule 99. Mediation Programs.

(a) Applicability to Circuits. Mediation programs may be undertaken and conducted in those judicial circuits which, with the approval of the Supreme Court, elect to utilize this procedure and in such other circuits as directed by the Supreme Court.

(b) Fee/Assessment Waivers. Mediation programs undertaken pursuant to this Rule shall include method(s) for providing no-cost mediation services for parties who have been granted a full fee/assessment waiver and lower-cost or no-cost mediation services for parties who have been granted a partial fee/assessment waiver.

(c) Local Rules.

(1) Each judicial circuit electing to establish a mediation program shall adopt rules for the conduct of the mediation proceedings. A person approved by the circuit to act as a mediator under these rules shall have judicial immunity in the same manner and to the same extent as a judge. Prior to the establishment of such a program, the Chief Judge of the circuit shall submit to the Supreme Court for its review and approval, through its Administrative Office, rules governing the operation of the circuit's program. A circuit operating a mediation program on the effective date of this Rule may continue the program for one year after the effective date of this Rule, but must, within 90 days of the effective date of this Rule, submit for the Supreme Court's review and approval the rules under which the mediation program is operating. Any amendments to approved local rules must be submitted to the Administrative Office for review and approval prior to implementation.

(2) At a minimum, the local circuit court rules shall address:

(i) Actions eligible for referral to mediation;

(ii) Appointment, qualifications and compensation of the mediators;

(iii) Scheduling of the mediation conferences, either in person or remotely;

(iv) Conduct of the conferences;

(v) Discovery;

(vi) Absence of party at the conference and sanctions;

(vii) Termination and report of mediation conference;

(viii) Finalization of agreement;

(ix) Confidentiality;

(x) Reporting to the Supreme Court for each approved mediation program shall be conducted in a manner and method as prescribed by the Administrative Office of the Illinois Courts.

Adopted April 11, 2001, effective immediately; amended October 10, 2001, effective immediately; amended Oct. 15, 2015, eff. immediately; amended Sept. 29, 2021, eff. Oct. 1, 2021; amended Dec. 6, 2021, eff. Jan. 1, 2022.

Rule 99.1. Mortgage Foreclosure Mediation Programs.

(a) Mortgage foreclosure specific mediation programs implemented by any judicial circuit must adhere to the requirements set forth in Rule 99 and this rule.

(b) Each judicial circuit that currently has approved local rules for a mediation program in place in accordance with Rule 99 may apply that program to mortgage foreclosure cases if applicable. Local rules amended or created to accommodate mortgage foreclosure cases consistent with this rule must be submitted to the Administrative Office of the Illinois Courts for review and approval prior to implementation.

(c) Each judicial circuit electing to establish a new mortgage foreclosure mediation program shall adopt rules for the conduct of the mortgage foreclosure mediation proceedings. If a judicial circuit elects to establish a new mortgage foreclosure mediation program, the judicial circuit shall establish a plan for starting a mortgage foreclosure mediation program that demonstrates the mediation program can be implemented for that particular county or counties at the time of submission of the local rules for approval by the Administrative Office.

(d) Based on the plan established pursuant to paragraph (c), the local circuit rules shall address:

(i) the requirements set forth in Rule 99;

(ii) resources to provide meaningful access to HUD-certified housing counseling services for eligible homeowners;

(iii) resources to provide meaningful access to *pro bono* legal representation for eligible homeowners;

(iv) resources to provide meaningful language access for program participants;

(v) any costs charged to any participant in the mortgage foreclosure case;

(vi) a sustainability plan that includes a long-term funding plan; and

(vii) training of judges, key court personnel and volunteers on mortgage foreclosure mediation.

Adopted Feb. 22, 2013, eff. Mar. 1, 2013.

COMMITTEE COMMENTS

(March 1, 2013)

The creation of Rule 99.1 resulted from the drastic increase in mortgage foreclosure cases and the resultant burden on judicial circuits throughout the state. Each judicial circuit faced a foreclosure crisis and began adapting its court procedures to most effectively administer the foreclosure proceedings. As a result, the judicial circuits began applying to the Illinois Supreme Court under Rule 99 for approval of mortgage foreclosure specific mediation programs. These programs varied widely in scope, capacity, and structure. To more fully understand the needs of mortgage foreclosure specific mediation, the Illinois Supreme Court appointed a committee to study and hold public hearings to address the need for uniformity among mediation programs. The Special Supreme Court Committee on Mortgage Foreclosures concluded that there was no one model that would work well for each judicial circuit but certain elements must be present to provide equal accessibility and assistance throughout the state. The intention of this rule is to incorporate more consistent elements in programs throughout the state while also allowing flexibility for changing conditions with mortgage foreclosure filings in the future.

The plan required in paragraph (c) recognizes the Supreme Court's need to understand the extent of the mortgage foreclosure problem in the county or counties in each judicial circuit applying for approval. The Supreme Court should be provided the history of the mortgage foreclosure filings in the judicial circuit, the available resources, and the staffing scope of the judicial circuit that shows that the mortgage foreclosure program is realistically attainable for the judicial circuit. The judicial circuit applying for approval should provide a plan that is comparable in scope, size and capacity to the mortgage foreclosure problem facing that circuit. Additionally, the plan should include information about available resources for qualified homeowners that will contribute to the successful implementation of such a program.

Paragraph (d) sets forth requirements specific to mortgage foreclosure mediation programs in addition to the requirements articulated in Rule 99. The Committee concluded that for residential mortgage foreclosures where a defendant was actively living in the home and facing foreclosure, access to a HUD-certified housing counselor and *pro bono* legal representation is beneficial. However, the Committee also recognized that the availability of those resources may differ from circuit to circuit in the state. As a result, any program proposal submitted for approval shall detail the access the program will be able to provide to eligible homeowners to HUD-certified housing counseling services and *pro bono* legal representation. Lack of availability of particular resources due to financial or geographic constraints shall not preclude approval of a mediation program.

The Committee also recognized that the implementation of a mortgage foreclosure mediation

program can drain a court's resources both financially and in staffing capacity. As a result, paragraphs (d)(v) and (vi) require any new mortgage foreclosure mediation program to set forth any costs charged to the parties in the litigation, as well as the sustainability funding plan. The fees charged may include, but are not limited to, mediator fees for mediation sessions and dedicated filing-fee add-ons. A sustainability plan may include those costs charged to litigants or another identifiable source of funding.

Rule 100. Reserved

Rule 100.1. Implementation of Expedited Child Support System

(a) Applicability to Circuits. An Expedited Child Support System may be established in those judicial circuits which, with the approval of the Supreme Court, elect to implement the System and in such other judicial circuits as may be directed by the Supreme Court.

(b) Submission of a Plan. The chief judge of a judicial circuit which elects to create a System must submit a Plan of Implementation. The Plan may establish a circuit-wide system, a system in each county within the circuit or a system in any county in the circuit. The chief judges of two or more contiguous judicial circuits may submit a Plan for the creation of a single system encompassing those judicial circuits or encompassing contiguous counties within the judicial circuits.

(c) The Plan. Each Plan must:

(1) describe how the Plan will ensure that support orders will be expedited, setting forth the time frames and the mechanism for expediting matters eligible for a hearing before an administrative hearing officer;

(2) describe how the System will comply with the Federal time frames established for the IV-D program in regulations promulgated by the United States Department of Health and Human Services Office of Child Support Enforcement (codified at 45 C.F.R. 303), for the disposition of parentage and child support cases, and how compliance information shall be provided with respect to IV-D and non-IV-D cases;

(3) indicate whether the System is to be made available to nonparticipants in the IV-D program as specified in subsection (d) below;

(4) indicate which of the actions eligible for a hearing under Rule 100.3 will be subject to a hearing before an administrative hearing officer;

(5) designate the number of administrative hearing officers to be employed, and whether they will be employed full-time or part-time;

(6) indicate the compensation to be paid to each administrative hearing officer;

(7) describe the personnel policies applicable to employees of the System;

(8) describe the facilities and security arrangements to be used for hearings, including the days and hours of availability;

(9) describe the procedures for training administrative hearing officers;

(10) describe the documentation and forms required for an expedited child support hearing in addition to those required by the Supreme Court;

(11) describe the procedure for transmittal to a judge of contested prehearing motions, other matters that require a court order, recommended orders, and any other matters that require transfer or should be referred to a judge;

(12) describe the procedure for transfer of matters from a judge to an administrative hearing officer; and

(13) describe the procedure for action by a judge on an administrative hearing officer's recommendations.

(d) Availability of System to Non-IV-D Participants. A Plan may provide that the System is available in cases where both parties are non-IV-D participants and request access to the System. If the System is available to non-IV-D participants, administrative expenses must be appropriated by the county board and a plan for cost-sharing must be approved as provided in subsection (g) below.

(e) Establishment of Demonstration Programs. The Illinois Department of Public Aid may notify the Supreme Court of its desire to establish a demonstration program in one or more circuits or counties. Any such program shall be available to IV-D participants. Upon receipt of such notification, the Supreme Court will notify the chief judge of each judicial circuit of the Department's desire to establish a demonstration program. Each chief judge may submit a demonstration Plan to the Supreme Court which, upon approval, will submit the Plan to the Department. The Department may select one or more circuits or counties to participate in the demonstration program after reviewing the submitted Plans. The Department shall notify the Supreme Court of its decision. The submitted demonstration Plan shall include each element listed in subsection (c) above. In addition, each demonstration Plan shall include a projected budget for operation of the System. The demonstration Plan shall specify whether it is available to non-IV-D participants, and if so, shall provide that the portion of the administrative costs attributable to use by non-IV-D participants has been appropriated by the demonstration county and meets the requirements of subsection (g) below.

(f) Supreme Court Review and Approval. The Supreme Court shall review and approve or request that the chief judge modify any submitted Plan or demonstration Plan for compliance with the Act, these rules and, to the extent Federal reimbursement is sought, the rules of the IV-D program. Upon Supreme Court approval of a Plan, any nondemonstration county, circuit, multicircuit area or multicounty area may establish a System. Approved demonstration Plans will be submitted to the Department of Public Aid for review based on Department standards.

(g) Funding. Before establishment of a System according to a Supreme Court approved Plan, each participating nondemonstration county board or boards must appropriate the administrative expenses incurred to establish and maintain the non-IV-D portion of the System and the IV-D portion that is not subject to Federal reimbursement. A Plan for cost-sharing must be submitted to the Department of Public Aid for approval. Each chief judge shall be responsible for documenting and recording the number of IV-D and non-IV-D cases pending and disposed of in the System

each month, and the portion of administrative expenses eligible for Federal reimbursement under the IV-D program, in such a manner as to insure Federal reimbursement. Information necessary for Federal reimbursement shall be submitted to the Department of Public Aid 14 days after the end of each month. The chief judge shall also submit copies of such information to the Supreme Court. The Illinois Department of Public Aid shall forward all reimbursement to the county in which the Plan is approved. The Supreme Court shall remain a signatory to the contract and shall maintain general supervisory oversight.

(h) Administration. Pursuant to rule, the chief judge of each judicial circuit shall be responsible for administering the System on a day-to-day basis, shall employ and terminate administrative hearing officers and other necessary staff, and shall review and evaluate the performance of each administrative hearing officer. Reviews shall be conducted quarterly in the first year of employment, and annually thereafter.

(i) Reporting of Data. The chief judge shall file a report with the Supreme Court within 35 days of the end of each State fiscal year detailing the number of:

(1) matters initially assigned to an administrative hearing officer;

(2) matters transferred to an administrative hearing officer;

(3) matters returned to an administrative hearing officer from a judge;

(4) matters submitted to a judge from an administrative hearing officer with recommendation for a court order;

(5) recommended court orders entered by a judge;

(6) recommended court orders rejected by a judge;

(7) matters submitted by an administrative hearing officer to a judge for hearings;

(8) IV-D and non-IV-D matters pending and disposed of in the System; and

(9) matters which complied or failed to comply with Federal time frames. The above data shall be reported for each fiscal year with respect to each administrative hearing officer and for the System as a whole.

(j) Local Rules. Each judicial circuit may adopt rules for the conduct of expedited child support hearings which are consistent with these rules and may determine which matters within the general classification of eligible actions shall be heard by administrative hearing officers.

(k) Applicability of Other Acts, the Code of Civil Procedure and Rules of the Supreme Court. The provisions of the Illinois Marriage and Dissolution of Marriage Act, the Illinois Parentage Act of 1984, the Illinois Public Aid Code, the Revised Uniform Reciprocal Enforcement of Support Act, the Nonsupport of Spouse and Children Act, the State Mandates Act, the Code of Civil Procedure and the rules of the Supreme Court shall be applicable to expedited child support hearings except insofar as these rules otherwise provide.

Adopted April 1, 1992, effective immediately; amended March 19, 1997, effective April 15, 1997; amended June 22, 2017, eff. July 1, 2017.

Rule 100.2. Appointment, Qualification and Compensation of Administrative Hearing Officers

(a) Appointment. Administrative hearing officers shall be hired by the chief judge of each judicial circuit, after satisfying the qualifications set by the Supreme Court. Candidates for the position of administrative hearing officer must apply for appointment with the chief judge of each judicial circuit.

(b) Qualifications. Administrative hearing officers must be licensed to practice law in Illinois and must have been engaged in the active practice of law for a minimum of three years.

(c) Disqualification. A full-time administrative hearing officer shall not practice law before any court. A part-time administrative hearing officer shall not practice law in any domestic relations matter or other matter which would qualify for an expedited hearing before an administrative hearing officer without the written consent of both parties. Upon appointment to a case, an administrative hearing officer shall notify the judge and withdraw from the case if any grounds appear to exist for disqualification under Supreme Court Rules 61 through 67.

(d) Oath of Office. Each administrative hearing officer shall take an oath of office similar to a judicial oath.

(e) Compensation. Each administrative hearing officer shall be compensated as provided in the Plan.

(f) Communications with Attorneys. Disciplinary rules governing the conduct of attorneys before a court remain applicable in expedited child support hearings. Disciplinary rules governing communications between an attorney and a judge govern communications between attorneys and administrative hearing officers.

Adopted April 1, 1992, effective immediately.

Rule 100.3. Actions Subject to Expedited Child Support Hearings

(a) Eligible Actions. The following actions, if so provided for in the Plan, are eligible to be heard by an administrative hearing officer:

(1) actions pursuant to the Illinois Public Aid Code, as amended, to establish temporary and final child support and medical support, and to enforce or modify existing orders of child support and medical support;

(2) actions pursuant to the Illinois Parentage Act of 1984, as amended, to establish a parent and child relationship; to establish child support and medical support after parentage has been acknowledged or established, whether or not these issues were reserved at the time judgment was entered; and to enforce or modify existing child support and medical support orders;

(3) actions pursuant to the Illinois Marriage and Dissolution of Marriage Act, as amended, to establish temporary and final child support and medical support, whether or not these issues were reserved or could not be ordered at the time judgment was entered because the court lacked personal jurisdiction over the obligor; and to enforce or modify existing orders of child support and medical support;

(4) actions pursuant to the Nonsupport of Spouse and Children Act to establish temporary child support and to enforce and modify such orders;

(5) actions pursuant to the Revised Uniform Reciprocal Enforcement of Support Act to establish temporary and final child support and medical support, whether or not these issues were reserved or could not be ordered at the time judgment was entered because the court lacked personal jurisdiction over the obligor; and to enforce and modify existing child support and medical support orders; and

(6) any other child support or medical support matter.

(b) Other Eligible Prejudgment Proceedings. If provided for in the Plan, the System may be available in prejudgment proceedings for dissolution of marriage, declaration of invalidity of marriage and legal separation.

Adopted April 1, 1992, effective immediately.

Rule 100.4. Authority of Administrative Hearing Officers

(a) Powers of Administrative Hearing Officers. Administrative hearing officers shall have the authority to conduct child support hearings, to administer oaths and affirmations, to take testimony under oath or affirmation, to determine the admissibility of evidence, to propose findings of fact, and to recommend orders to the judge based on such evidence as prescribed by the Act.

(b) Accept Voluntary Agreements of Parties. Administrative hearing officers may accept stipulations of fact and voluntary agreements of the parties setting the amount of child support to be paid or medical support liability and to recommend to the judge the entry of orders incorporating such agreements.

(c) Accept Voluntary Acknowledgments of Parentage. Administrative hearing officers may accept voluntary orders of parentage and recommend to the judge the entry of orders based on such acknowledgments. Prior to accepting an acknowledgment of parentage, administrative hearing officers shall advise the putative father of his rights and obligations.

(d) Discovery. Administrative hearing officers shall manage all stages of discovery, including hearings on citations to discover assets and setting deadlines for the completion of discovery, and to direct the submission to tests pursuant to section 11 of the Illinois Parentage Act of 1984 and Rule 100.5 below. Administrative hearing officers may not enter orders with respect to disputed discovery matters though they may recommend the entry of such orders to a judge. Discovery shall be conducted in accordance with these rules and shall be completed prior to the expedited child support hearing. No discovery shall be permitted after the hearing, except upon leave of court and good cause shown.

(e) Compelling Appearance of the Obligor. The person designated in the Plan may recommend that the judge issue a notice requiring the obligor to appear before the administrative hearing officer or in court.

(f) Recommend Default Orders. Administrative hearing officers may recommend that the judge issue a default order to absent parties who fail to respond to a notice to appear before the

administrative hearing officer or such other orders as are specified in Rule 100.11(d).

(g) Authority over Unemployed Obligor. Administrative hearing officers may recommend that an unemployed obligor who is not making child support payments or who is unable to provide support be ordered to seek employment and may recommend that the obligor be required to submit periodic reports as to such efforts. Administrative hearing officers may recommend that the obligor be ordered to report to the appropriate agency to participate in job search, training or work programs.

(h) Foreign Support Matters. Administrative hearing officers may recommend that foreign support judgments or orders be registered as Illinois judgments or orders.

(i) Non-IV-D Obligees. Administrative hearing officers shall inform non-IV-D obligees of the existence and services of the IV-D program and provide applications if requested. Administrative hearing officers shall also inform such obligees that payment may be requested through the clerk of the circuit court. Any such request that payment be made through the clerk shall be noted in the recommended order to the judge.

Adopted April 1, 1992, effective immediately.

Rule 100.5. Blood Tests

(a) Order to Submit to Tests. Administrative hearing officers may recommend, upon the request of a party, that the judge order the mother, child and alleged father to submit to appropriate tests to determine inherited characteristics including, but not limited to, blood types and genetic markers such as those found by Human Leucocyte Antigen (HLA) tests. The judge shall determine the appropriate tests to be conducted and appoint an expert to determine the testing procedures and conduct the tests.

Adopted April 1, 1992, effective immediately.

Rule 100.6. Scheduling of the Hearings

(a) Assignment of Hearing Date. If an action or a motion filed by a IV-D participant qualifies as an action over which an administrative hearing officer has authority, the person designated in the Plan shall assign a hearing date before an administrative hearing officer. Non-IV-D participants may request that the clerk assign eligible actions a hearing date before an administrative hearing officer. The procedure for fixing the date, time and place of a hearing before an administrative hearing officer shall be prescribed by circuit rule provided that not less than seven days' notice in writing shall be given to the parties or their attorneys of record. In cases in which the court has previously acquired jurisdiction over the responding party, the hearing shall be held on the scheduled date and not less than 21 days or more than 35 days of the date of filing of the action, unless continued by the administrative hearing officer or court upon good cause shown. In cases in which the court has not previously acquired jurisdiction over the responding party, the hearing shall be held on the scheduled date and not less than 21 days or more than 45 days of the date of filing of the action, unless continued by the administrative hearing officer or court upon good cause

shown. The hearing shall be held at a location provided or authorized by the chief judge of the circuit or remotely, including by telephone or video conference.

(b) Providing Notice of Hearing Date. The person designated in the Plan shall serve notice of the action and the hearing date on respondent by regular mail to his or her last known address, unless the action is one over which no court has previously acquired personal jurisdiction, in which case service will be in the same manner as summonses are served in other civil proceedings. If service is made by mail, the person serving notice shall prepare a certificate of mailing to be included in the file.

(c) Subpoenas. The clerk of the circuit court may issue subpoenas upon, or prior to, the filing of a petition if the court has previously acquired jurisdiction over the subject matter of the underlying action.

(d) Affidavit of Income and Expenses. A form affidavit of income and expenses, in such form as the Supreme Court shall prescribe, may be served on the respondent with the petition initiating the proceedings before the administrative hearing officer. Each party should be requested to complete the form prior to the first appearance before the administrative hearing officer.

Adopted April 1, 1992, effective immediately; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Rule 100.7. Conduct of the Hearing

(a) Established Rules of Evidence Apply. Except as provided by this rule, the rules of evidence shall be liberally construed in all expedited child support hearings.

(b) Documents Presumptively Admissible. A party may offer in evidence, without foundation or other proof:

(1) the obligor's pay stubs or either employer-provided statement of gross income, deductions and net income or other records prepared by the employer in the usual course of business.

(2) documents provided by the obligor's insurance company which describe the dependent care coverage available to the obligor; and

(3) records kept by the clerk of the circuit court as to payment of child support.

If at least seven days written notice of the intention to offer the following documents in evidence is given to every other party, accompanied by a copy of the document, or if at the expedited child support hearing the other party does not object, a party may offer in evidence without foundation or other proof:

(1) the deposition of a witness, the statement of a witness which the witness would be allowed to express if testifying in person or remotely, including by telephone or video conference, if the statement is made by affidavit or by certification as provided in section 1-109 of the Code of Civil Procedure;

(2) computer-generated documents and records, unless objected to by a party; and

(3) any other document not specifically covered by any of the foregoing provisions, and

which is otherwise admissible under the rules of evidence.

(c) Opinions of Expert Witnesses. Notwithstanding the provisions of Rule 220, a party who proposes to use a written opinion of an expert witness or the testimony of an expert witness at the hearing may do so provided a written notice of such intention is given to every other party not less than seven days prior to the date of hearing, accompanied by a statement containing the identity of the expert, his qualifications, the subject matter, the basis of his conclusions, and his opinion.

(d) Right to Subpoena Maker of a Document. Any other party may subpoena the author or maker of a document admissible under this rule, at that party's expense, and examine the author or maker as if under cross-examination. The provisions of the Code of Civil Procedure relative to subpoenas, section 2-1101, shall be applicable to expedited child support hearings and it shall be the duty of the party requesting the subpoena to modify the form to show that the appearance is set before an administrative hearing officer and to give the time and place set for the hearing.

(e) Adverse Examination of Parties or Agents. The provisions of the Code of Civil Procedure relative to the adverse examination of parties or agents, section 2-1102, shall be applicable to expedited child support hearings as upon the trial of a case.

(f) Compelling Appearance of Witness at Hearing. The provisions of Supreme Court Rule 237 shall be equally applicable to expedited child support hearings as they are to trials.

Adopted April 1, 1992, effective immediately; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Rule 100.8. Absence of Party at Hearing

(a) Failure to be Present at Hearing. The expedited child support hearing may proceed in the absence of the responding party if service has been made and the petitioning party and/or his or her attorney is present. Based upon the testimony of the petitioning party and any other evidence that may have been presented, the administrative hearing officer shall recommend that the judge enter an appropriate order. If the petitioning party does not agree to the recommended order, the administrative hearing officer shall immediately schedule a judicial hearing, record the date, time and place of the hearing upon a notice and provide such notice to the petitioning party at the expedited hearing. Such notice shall be sent to the nonappearing party by regular mail. If the petitioning party agrees to and signs the order, a copy of the signed order and a notification of the right to object to the order shall be served upon the nonappearing party as directed in subsection (b) below. If the petitioning party is not present, either in person or through an attorney, the administrative hearing officer may continue the matter or may strike the matter with leave to reinstate. Notification of such action shall be served upon the petitioning party by regular mail. For the purposes of this paragraph, being present encompasses appearing in person, by counsel, or remotely, including by telephone or video conference.

(b) Service of Recommended Order and Notice. If service to commence the hearing before the administrative hearing officer was made by regular mail, the notice and recommended order shall be served in the same manner as summonses are served in other civil proceedings or by certified mail, return receipt requested, mailed to the nonappearing party's last known address. If

service to commence the hearing was as provided in the Code of Civil Procedure, the notice and recommended order shall be served by regular mail to the nonappearing party's last known address.

(c) Objections. The nonappearing party may file with the judge a written objection to the entry of the recommended order within 14 days after the order was mailed. If no objection is filed within 14 days, the nonappearing party is deemed to have accepted the recommended order. The judge may then enter the order, refer the case back to the administrative hearing officer for further proceedings, or conduct a judicial hearing. If a timely objection is filed, the judge must hold a judicial hearing and shall enter an appropriate order.

Adopted April 1, 1992, effective immediately; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Rule 100.9. Transfers for Judicial Hearings

(a) Domestic Relations Matters Other than Child Support and Parentage. Any domestic relations matter other than child support and parentage, including but not limited to petitions for visitation, custody, distribution of property, petitions pursuant to section 513 of the Illinois Marriage and Dissolution of Marriage Act, and spousal maintenance shall be transferred according to the judicial circuit's Plan to a judge for a judicial hearing. The administrative hearing officer shall proceed as scheduled with matters relative to child support or parentage. In actions to establish parentage where the putative father voluntarily acknowledges paternity, the recommended order shall include provisions for custody of the child in the mother and reasonable visitation for the father if both parties agree. If either party wishes to contest custody or visitation, the recommended order will be silent on those issues, but the contest will not delay the entry of the order establishing parentage and child support.

(b) Prehearing Motions and Other Matters that Require a Court Order. All prehearing motions and other matters that require a court order or judicial hearing, as defined in the Act and in these rules, shall be transferred to a judge for resolution in an expeditious manner. However, if the parties are in agreement as to the prehearing motion or other such matters, the administrative hearing officer shall transmit a recommended order, signed by both parties to a judge.

(c) Matters Requiring Judicial Hearing. All other matters requiring a judicial hearing, as provided for in the Act and in these rules, shall be immediately transferred according to the judicial circuit's Plan to a judge for a judicial hearing.

(d) Service of Orders of Withholding Pending Judicial Hearing. Whenever the parties disagree with part of the administrative hearing officer's recommendations, but do agree as to the existing obligation and no order for withholding was previously served upon the obligor's employer, the order for withholding shall be served upon the obligor's employer as to the existing support obligation pending judicial hearing on the contested matter.

Adopted April 1, 1992, effective immediately.

Rule 100.10. Submission of Recommendations to the Court

(a) Notice to Parties. The administrative hearing officer shall present each party with a copy of the recommended order to be submitted to a judge. The administrative hearing officer shall also present each party with a written notice informing the parties of their right to request a judicial hearing and the procedures for so doing. The recommended order and notice shall be presented to each party at the conclusion of the hearing. If either party is not present at the conclusion of the hearing, either in person or through an attorney, the recommendation and order shall be mailed by regular mail to the party's last known address. For the purposes of this paragraph, being present encompasses appearing in person, by counsel, or remotely, including by telephone or video conference.

(b) Acceptance of Recommended Order. If both parties are present at the hearing and agree to the recommended order, they shall sign the recommended order. The administrative hearing officer shall transmit the signed recommended order to a judge as provided for in the Plan of Implementation.

(c) Rejection of Recommended Order. If either party does not agree to the recommended order or any part thereof, the administrative hearing officer shall immediately request a judicial hearing to resolve the contested matter. The administrative hearing officer shall record the date, time and place of such judicial hearing on a notice which shall be presented to the parties at the conclusion of the hearing. Notice shall be sent to nonappearing parties by regular mail. The administrative hearing officer shall transmit to a judge a written statement indicating those issues to which the parties agree and disagree, all documentary evidence and all schedules presented at the expedited child support hearing.

(d) Administrative Hearing Officer May Not Testify. An administrative hearing officer may not be called or compelled to testify as to what transpired before the administrative hearing officer with respect to contested matters.

Adopted April 1, 1992, effective immediately; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Rule 100.11. Authority Retained by the Court

(a) Review Recommendations of Administrative Hearing Officers. The judge shall review all recommended orders of an administrative hearing officer upon which parties agree and enter such orders as are appropriate as to all or part of the matters indicated on the recommended order.

(b) Conduct Judicial Hearings. The judge shall conduct judicial hearings on all prehearing motions the parties disagree with, the recommended order of the administrative hearing officer on any domestic relations matters other than uncontested child support and parentage matters, on objections to the entry of orders as provided for in Rule 100.6 and section 10 of the Act, and on any other matters properly before the court.

(c) Hear Contested Parentage Matters. Only the judge may conduct trials in contested parentage cases.

(d) Issue Special Orders. Only the judge may issue body attachment orders, rules to show

cause, or conduct contempt proceedings. The judge shall impose sanctions or relief in such cases as are appropriate.

(e) Impose Sanctions. Only the judge may impose sanctions pursuant to Supreme Court Rule 137.

Adopted April 1, 1992, effective immediately.

Rule 100.12. Judicial Hearings

(a) Recommended Orders Agreed Upon by the Parties. The judge shall review the recommended orders of administrative hearing officers in a timely fashion. The judge (1) may enter an order consistent with the recommended order, (2) may reject all or part of the recommended order and refer the matter to the administrative hearing officer for further proceedings, or (3) may conduct judicial hearings as are necessary. The judge shall provide the administrative hearing officer with a copy of the entered order and may inform the administrative hearing officer if a recommended order was not accepted by the judge and the reasons for the changes or rejection. If the judge enters an order consistent with a recommended order, the effective date of the order shall be (1) the date on which the recommended order was signed by both parties, or (2) if the respondent party failed to appear and failed to file a timely objection to the recommended order pursuant to Rule 100.8(c), the date the recommended order was signed by the petitioning party. The order may specify the date payments of support are to begin, which may be different from the effective date of the order.

(b) Recommended Orders Rejected by the Parties. Upon receipt of a statement from the administrative hearing officer that the parties do not agree to all or part of a recommended order, the judge shall promptly conduct a judicial hearing to resolve any contested matters and shall enter an appropriate order.

(c) Presentation of Order to the Parties. The clerk of the circuit court shall mail a copy of all orders to the parties within five days of entry. If the parties are present in court at the time the order is entered, a copy shall be given to both parties in open court. If an order sets forth an amount for support, an immediate withholding order shall be specially certified and mailed to the obligee or his or her attorney for service.

Adopted April 1, 1992, effective immediately.

Rule 100.13. Definitions. For purposes of these rules, the following terms shall have the following meanings:

(a) "Act" shall mean the Expedited Child Support Act of 1990.

(b) "Administrative hearing officer" shall mean the person employed by the chief judge of the circuit court of each circuit, county, multicounty area or multicircuit area establishing an expedited child support system for the purpose of hearing child support and parentage matters and recommending orders.

(c) “Expedited child support hearing” shall mean a hearing before an administrative hearing officer pursuant to the Act and these rules.

(d) “Plan” shall mean the plan submitted by the chief judge of a judicial circuit to the Supreme Court for the creation of an expedited child support system in such circuit pursuant to the Act and these rules.

(e) “System” shall mean the procedures and personnel created by the Act and these rules for the expedited establishment, modification, and enforcement of child support orders, and for the expedited establishment of parentage.

(f) “IV-D program” shall mean the Child Support Enforcement Program established pursuant to Title IV, Part D, of the Social Security Act (42 U.S.C. §651 *et seq*.) as administered by the Illinois Department of Public Aid.

Adopted April 1, 1992, effective immediately.

Committee Comments

Rule 100.1 Implementation of Expedited Child Support System

Rule 100.1 provides for the creation of an Expedited Child Support System in judicial circuits. It specifies that each judicial circuit which elects to create such a System must submit a Plan of Implementation to the Supreme Court for approval, identifies the matters which must be set forth in the Plan, and provides for Supreme Court review and approval. The rule addresses the availability of the System to various classes of participants, the use of demonstration programs, and funding of Systems. The rule makes judicial circuits responsible for administration of the System and reporting of data relative to the System. The rule also provides for the establishment of local rules to accompany these rules and specifies those other rules, acts and codes which apply to the conduct of the System.

Rule 100.2. Appointment, Qualification and Compensation of Administrative Hearing Officers

Rule 100.2 provides for the appointment, qualification, disqualification and compensation of administrative hearing officers. The rule specifies that administrative hearing officers take an oath of office and conduct hearings according to applicable disciplinary rules.

Rule 100.3. Actions Subject to Expedited Child Support Hearings

Rule 100.3 lists those actions which are eligible to be heard by an administrative hearing officer if so specified in the judicial circuit’s Plan of Implementation.

Rule 100.4. Authority of Administrative Hearing Officers

Rule 100.4 specifies the powers of administrative hearing officers relative to the conduct of child support hearings, management of discovery, authority over parties, and resolution of matters.

Rule 100.5. Blood Tests

Rule 100.5 provides the administrative hearing officers with authority to recommend submission to blood tests. The rule provides for the admissibility of blood test results, a party's objections to matters involving blood tests, the evidentiary value of blood tests and the cost of blood tests in matters before an administrative hearing officer.

Rule 100.6. Scheduling of Hearings

Rule 100.6 sets forth the procedure for assignment of a hearing date before an administrative hearing officer, the time period in which a hearing must be held, and the procedure for providing notice to the responding party.

Rule 100.7. Conduct of the Hearings

Rule 100.7 governs the conduct of expedited child support hearings and specifies that the rules of evidence apply to such hearings. The rule prescribes the circumstances under which certain specified documents are presumptively admissible in evidence. The rule sets forth the procedure for offering expert testimony and a party's right to subpoena the maker of admissible documents and to cross-examine parties and their agents. The rule also provides for compelling the appearance of a witness at an expedited child support hearing.

Rule 100.8. Absence of Party at Hearing

Rule 100.8 governs the conduct of the expedited child support hearing in the absence of a party, the service of the recommended order and notice upon an absent party, and the filing of objections by an absent party.

Rule 100.9. Transfers for Judicial Hearings

Rule 100.9 lists those matters which must be transferred to a judge for a judicial hearing or court order.

Rule 100.10. Submission of Recommendations to the Court

Rule 100.10 sets forth the procedure for submission of recommendations to a judge upon acceptance of a recommended order by both parties, and the presentation of the recommended order and of a written notice of the right to a judicial hearing to each party. The rule sets forth the procedure for scheduling a judicial hearing upon rejection of the recommended order by either party, notice to the parties of such hearing, and transmittal to the judge of a written statement indicating the issues to which the parties agree and those to which they disagree and of all documentary evidence presented at the expedited child support hearing.

Rule 100.11. Authority Retained by the Court

Rule 100.11 sets forth the judge's authority to review recommendations of administrative hearing officers, to conduct judicial hearings, to hear contested parentage actions, to issue special orders and to impose sanctions.

Rule 100.12. Judicial Hearings

Rule 100.12 governs the procedure whereby a judge reviews recommended orders and enters judicial orders based thereon. The rule sets forth the conduct of further judicial hearings and the resolution of contested matters. The rule also provides for the presentation of orders to the parties.

Rule 100.13. Definitions

Rule 100.13 defines certain terms, in accordance with the Expedited Child Support Act, as used throughout the Expedited Child Support Rules.

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, identifying the name of the clerk. The summons shall clearly identify 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. All summons issued in civil cases in Illinois must contain the following language:

> E-filing is now mandatory for documents in civil cases with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit http://efile.illinoiscourts.gov/service-providers.htm to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit http://www.illinoiscourts.gov/FAQ/gethelp.asp, or talk with your local circuit clerk's office.

(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 prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(2) In any action for eviction 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 7 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 prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(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 prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(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; amended June 26, 2018, eff. July 1, 2018; amended July 19, 2018, eff. immediately; amended Aug. 22, 2018, eff. immediately; amended July 17, 2020, eff. immediately.

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 may be filed immediately after service on each defendant. The proof of service need not state whether a copy of the complaint was served. 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 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. 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 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 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 summons used in making service shall have attached thereto a copy of the complaint.

(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 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 promptly and without charge to any party requesting it.

(d) Failure to Serve Documents. Failure to deliver or serve documents 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, the aggrieved party may obtain the document 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.

(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. (Form 1 should be used when the will is admitted to probate and Form 2 when probate is denied.)

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. (Form 3 should be used when the will is admitted to probate and Form 4 when probate is denied.)

(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. (Form 1 should be used when the will is admitted to probate and Form 2 when probate is denied.)

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"), 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. (Form 3 should be used when the will is admitted to probate and Form 4 when probate is denied.)

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.

http://www.illinoiscourts.gov/files/122917.pdf/amendment

Rule 109. Reserved

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.

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 111-12. Reserved

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. 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 attorney for plaintiff shall prepare the notice in its entirety, file it with the Clerk of the Circuit Court, and provide the Clerk with one copy for mailing to each borrower address specified in the notice. Within five business days after the entry of default, the Clerk of the Circuit Court shall mail, 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.

(e) Effect on Judgment and Orders. Neither the failure to send the notice required by paragraph (d)(1) 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 electronic service pursuant to Illinois Supreme Court Rule 11(c) to all defendants appearing of record and shall send notice by mail to all defendants not appearing of record. Additionally, a self-represented litigant who has an e-mail address must designate a single e-mail address to which service may be directed under Rule 11. If a self-represented litigant 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. The notice shall include the foreclosure sale date, time, and location of the sale, unless such sale is an adjourned sale occurring less than 60 days after the last scheduled sale, wherein notice of such

adjourned sale need not be given in accordance with section 15-1507(c)(4) of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1507(c)(4)).

(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.

(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.

(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). Special representatives appointed under this paragraph shall be entitled to costs and reasonable attorney fees from the party who sought the appointment as well as any successor or assign of that party as may be applicable, subject to administrative regulation by the court.

(j) Remote Appearances. All aspects of foreclosure proceedings, including but not limited to status hearings, case management hearings, entry of judgment of foreclosure, judicial sales, and entry of an order approving sale, may be conducted remotely, including by telephone or video conference. Each court shall determine which aspects of a foreclosure proceeding may be conducted remotely based on the needs of the jurisdiction, case participants, and technology available.

Adopted Feb. 22, 2013, eff. May 1, 2013; amended Apr. 8, 2013, eff. May 1, 2013; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended June 8, 2018, eff. July 1, 2018; amended Nov. 19, 2020, eff. Dec. 1, 2020; amended Sept. 29, 2021, eff. Oct. 1, 2021.

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.

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.

(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 115-30. Reserved

Part B. Pleadings and Other Papers

Rule 131. Form of Documents

(a) Legibility. All documents for filing and service shall be legibly written, typewritten, printed, or otherwise prepared. The clerk may reject any documents 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 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) Self-Represented Litigants. All documents filed or served in any cause by a self-represented litigant upon another party shall bear the self-represented litigant's mailing address and telephone number. Additionally, a self-represented litigant who has an e-mail address must designate a single e-mail address to which service may be directed under Rule 11. If a self-represented litigant 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.

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; amended July 15, 2020, eff. immediately.

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 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 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).

(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 "Notice 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.

Rule 139. Practice and Procedure in Eviction Cases

(a) Applicability of the Rule. This Rule supplements, but does not replace, the requirements set forth in article IX of the Code of Civil Procedure (735 ILCS 5/9-101 *et seq.*) and applies only to eviction actions filed on or after the effective date of July 17, 2020.

(b) Supporting Documents for Eviction Complaints.

(1) At the time of filing, the plaintiff shall attach a copy of the eviction notice or demand upon which the action is based, including any affidavits or other proof of service, to the eviction

complaint. If the plaintiff does not have the eviction notice or demand, the plaintiff may attach an affidavit instead, using the standardized form approved for use by the Illinois Supreme Court.

(2) When an eviction action is based on a breach of a written lease and brought pursuant to section 9-210 of the Code of Civil Procedure (735 ILCS 5/9-210), the plaintiff shall also attach a copy of the lease, or the relevant portions of the lease, to the eviction complaint at the time of filing. If the plaintiff does not have the lease or if there is no written lease, the plaintiff may attach an affidavit instead, using the standardized form approved for use by the Illinois Supreme Court.

Adopted July 17, 2020, eff. immediately.

Committee Comments
(July 17, 2020)

Article IX of the Code of Civil Procedure does not require that a plaintiff include all of the facts necessary to establish a *prima facie* case in the eviction complaint. Instead, it requires that an eviction complaint state that the plaintiff is "entitled to the possession of such premises (describing the same with reasonable certainty), and that the defendant (naming the defendant) unlawfully withholds the possession thereof from him, her or them." 735 ILCS 5/9-106 (West 2018).

The factual basis for a termination of tenancy or lease, or authority for a demand for possession, is detailed in the "notice of termination" or "demand for possession" served on the tenant prior to the filing of the eviction action. Additionally, demands and notices must provide language indicating termination of tenancy and, when applicable, provide for a cure period. The notices and demands provide tenants with a basis for understanding why their landlords are seeking to evict them, and ways to cure the violations, when applicable.

However, although a demand for possession or a notice of termination is almost always a prerequisite to the filing of an eviction action, these documents, generally, have not been attached to eviction complaints. Similarly, although the breach of a lease term may form the basis for a termination notice and eviction complaint, the lease, or relevant portion of the lease, also rarely has been attached to eviction complaints.

Section 2-606 of the Code of Civil Procedure does require that, "[i]f a claim or defense is founded upon a written instrument, a copy thereof, or of so much of the same as is relevant, must be attached to the pleading as an exhibit or recited therein, unless the pleader attaches to his or her pleading an affidavit stating facts showing that the instrument is not accessible to him or her. In pleading any written instrument a copy thereof may be attached to the pleading as an exhibit. In either case the exhibit constitutes a part of the pleading for all purposes." 735 ILCS 5/2-606 (West 2018). However, section 2-606 of the Code of Civil Procedure, generally, has not been applied to eviction actions because the pleading requirements described in section 9-106 do not expressly require that any documents be attached to the complaint. Paragraph (b) supplements the complaint requirements of the eviction statute in a manner consistent with section 2-606.

The requirements of paragraph (b), that a copy of the predicate written demand, termination notice (including affidavits or proof of service), and, where applicable, the relevant lease provisions be attached to the complaint, allow courts and tenants to have these documents upon the initiation of eviction actions and assure that the documents are available in court for use by both landlords and tenants for more efficient and just resolution of these cases.

Rules 140-180. Reserved

Part C. Appearances and Times 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. 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) *Eviction Actions.* In actions for eviction (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; amended July 17, 2020, eff. immediately.

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

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.

Rules 185-86. 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 documents filed in the case and all orders entered therein. 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 188-90. 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 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 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 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.

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.

Administrative Order
(November 27, 2002)

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.

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; corrected July 30, 2014, *nunc pro tunc* to 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.

Unless otherwise agreed, remote electronic means depositions, under Rule 206(h), shall be deemed taken at the place where the deponent is located while answering questions. The decorum customary and appropriate in an in-person deposition shall be followed during a remote electronic means deposition.

Amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended Sept. 29, 2021, eff. Oct. 1, 2021.

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

(1) Depositions which are to be recorded by audio-visual equipment shall begin by the operator of the equipment 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 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 and the beginning of each succeeding segment shall be announced on camera by the operator.

(2) The operator shall initially take custody of the audio-visual recording of the deposition and shall run through the recording 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 is a true record of the deposition and shall certify that the operator has not edited or otherwise altered the recording. 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 of a deposition shall be returned to the attorney for the party at whose instance the deposition was recorded. Said attorney is responsible for the safeguarding of the recording and shall permit the viewing of and shall provide a copy of the recording upon the request and at the cost of any party. A recording of a discovery deposition shall not be filed

with the court except by leave of court for good cause shown.

(4) A recording 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.

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

(6) A party has the right to use the video recording of a deposition or any part thereof in lieu of reading from a stenographic transcript 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) Reserved.

(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, unless the deposition participants are able to view the exhibits in real time during the deposition.

(3) Reserved.

(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.

(5) Time spent at a remote electronic means deposition in addressing necessary technology issues shall not count against the time limit for the deposition set by Rule 206(d), by stipulation, or by court order.

(6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

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; amended Sept. 26, 2019, eff. Oct. 1, 2019; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Committee Comments

(Sept. 29, 2021)

Paragraph (h)

Where a deponent testifies from a remote location and no neutral representative or

representative of an adverse party is present in the room with the testifying deponent, care must be taken to ensure the integrity of the examination. The testifying deponent may be examined regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a deponent should instruct the deponent that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented deponents may be similarly instructed by counsel for any party.

Committee Comments

(Sept. 26, 2019)

Paragraph (g)(6)

When the rules of evidence permit the use of deposition testimony at trial and the deposition has been video recorded, the amendment gives a party the right to show the video recording. The amendment addresses only the form of presentation, not the rules about when the use of deposition testimony is permitted.

(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 to the deponent, at the address supplied, notice that it is available and may be examined at a stated place at stated times, or pursuant to arrangement, including by remote electronic means. 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 within the deposition transcript that the deponent was duly sworn by the officer 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.

(2) Deposition transcripts shall not be filed with the clerk of the court as a matter of course. The party filing a deposition 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; amended Sept. 29, 2021, eff. Oct. 1, 2021.

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 shall pay the charges for 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.

(c) For the purposes of this rule, attendance encompasses appearing in person, by attorney, or remotely, including by telephone or video conference.

Amended Sept. 29, 2021, eff. Oct. 1, 2021.

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, 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 the deposition on the parties, attaching thereto the copy of the notice and the questions received by the officer. 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 a deposition 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 a former statement, pursuant to Illinois Rule of Evidence 801(d)(2);

(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 not a controlled expert witness , 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 or her own deposition if he or she 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 or her 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 or Refiling. Substitution of parties does not affect the right to use depositions previously taken. If any action in any court of this State is dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former action may be used as if taken in the later action.

(e) Depositions Taken in Other Jurisdictions. A deposition taken in any action in another jurisdiction of the United States that involves the same subject matter and the same parties or their representatives or successors in interest as an action brought in this State may be used as if taken in the action brought in this State. If the deposition was or would be admissible as substantive evidence at trial in the other jurisdiction, the deposition is deemed an evidence deposition. If not, the deposition is deemed a discovery deposition. By pretrial order, the court may require a party to give other parties reasonable notice of its intent to use a deposition taken in another jurisdiction.

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; amended Sept. 26, 2019, eff. Oct. 1, 2019; amended Sept. 30, 2020, eff. Oct. 1, 2020.

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.

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.

(Nov. 27, 2002)

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.

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 after service of the request 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) 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, 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 producing party 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; amended June 8, 2018, eff. July 1, 2018.

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 deliver to the attorneys for the party requesting the examination and the party examined 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 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 placed in 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.

Administrative Order
(Nov. 27, 2002)

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)

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 (including by remote electronic means) 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; amended Sept. 29, 2021, eff. Oct. 1, 2021.

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 in person or remotely, including by telephone or video conference, if allowed, 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, duration, and means by which depositions 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 including but not limited to issues involving electronically stored information and preservation.

(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 and state whether parties shall appear I nperson or remotely, including by telephone or video conference.

(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; amended May 29, 2014, eff. July 1, 2014; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Committee Comment
(Revised May 29, 2014)

Paragraph (a)

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.

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 220-21. 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 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.

(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 225-30. 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 and whether the person shall appear in person or remotely, including by telephone or video conference. 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

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 and stating whether the party shall appear in person or remotely, including by telephone or video conference. 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; amended Sept. 29, 2021, eff. Oct. 1, 2021.

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, upon request or on its own order, for good cause shown and upon appropriate safeguards, allow a case participant to testify or otherwise participate in a civil trial or evidentiary hearing by video conferencing from a remote location. Where the court or case participant does not have video conference services available, the court may consider the presentation of the testimony by telephone conference in compelling circumstances with good cause shown and upon appropriate safeguards. The court may further direct which party shall pay the cost, if any, associated with the remote conference and shall take whatever action is necessary to ensure that the cost of remote participation is not a barrier to access to the courts.

Adopted October 4, 2011, effective immediately; amended May 22, 2020; eff. immediately.

Committee Comments

(October 4, 2011)

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.

Committee Comments

(May 22, 2020)

The principles that prompted Rule 45 apply to the changes to Rule 241. The use of video technology to conduct testimony under oath in civil trials increases accessibility to the courts, aids in the efficient administration of justice, avoids delays in trials, and more efficiently administers testimony for case participants who face an obstacle to appearing personally in court such as illness, disability, or distance from the courthouse.

This rule adopts the definitions found in the Illinois Supreme Court Policy on Remote Appearances in Civil Cases. In particular, a case participant includes any individual involved in a civil case including the judge presiding over the case, parties, lawyers, guardians *ad litem*, minors in the care of the Department of Children and Family Services (DCFS), witnesses, experts,

interpreters, treatment providers, law enforcement officers, DCFS caseworkers, and court reporters.

Due to the relative importance of live testimony in court, a showing of good cause is required. Good cause is likely to arise when a witness is unable to attend trial for unexpected reasons, such as accident, illness, or limited court operations, but also in foreseeable circumstances such as residing out of state. Good cause may be established where all parties agree that testimony should be presented by video conference. Adequate safeguards are necessary to ensure accurate identification of the case participant testifying remotely and to avoid improper influences by any individual who may be present with the case participant at the time of the testimony.

A court has broad discretion to determine if video testimony is appropriate for a particular case. A court should take into consideration and balance any due process concerns, the ability to question witnesses, hardships that would prevent the case participant from appearing in person, the type of case, any prejudice to the parties if testimony occurred by video conference, and any other issues of fairness. A court must balance these and other relevant factors in an individual case.

Where a case participant testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying case participant, care must be taken to ensure the integrity of the examination. The testifying case participant may be examined by the court or counsel for any party regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a case participant should instruct the case participant that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented case participants may be similarly instructed by the court.

Where the court or case participant does not have video conference services, the court may consider the presentation of the testimony by telephone or other audio means but only upon a showing of good cause, including a showing of exigent, safety, or security circumstances and with appropriate safeguards. The court must carefully balance the factors described in these comments with the need to provide protection for the case participant.

Courts should first consider obtaining and using free video conference services before considering fee-based services. Free services are readily available. In this way, a remote appearance will not impose a cost on a case participant who is not able to pay that cost or would not otherwise incur a comparable cost if appearing in person. Some jurisdictions currently use video conference services which charge fees. However, to promote access to justice and to remove financial barriers to remote court appearances, courts should consider obtaining and using both paid and free services. Local rules and practices should not prohibit the use of free services for remote court appearances.

Additionally, any fees associated with a remote court appearance should be subject to waiver for case participants who cannot afford them. If a court chooses to use a service that requires the payment of fees, the court should consider whether the costs can be waived by the service, paid by

another party, or paid by the court, or if the court should use a free service instead. The focus should be on increasing accessibility to the courts and not on imposing an additional barrier to a remote court appearance in the form of a fee. The court or circuit clerk shall not impose their own fees for case participants to do remote court appearances.

Rule 242. Reserved

Rule 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.

Rules 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.

Committee Comments

The purpose of this rule is to remove any doubt as to the date a judgment is entered. It applies to both law and equity, and the distinction stated in *Freeport Motor Casualty Co. v. Tharp*, 406 Ill. 295, 94 N.E.2d 139 (1950), as to the effective dates of a judgment at law and a decree in equity is abolished. In 1990 the rule was amended to provide that in those cases in which, by circuit court rule, the prevailing party is required to submit a draft order, a judgment becomes final only after the signed judgment is filed. The 1990 amendment was intended to negate the ruling in *Davis v. Carbondale Elementary School District No. 95* (1988), 170 Ill. App. 3d 687, 525 N.E.2d 135.

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 and appealable. The motion must be filed either within 30 days of that judgment order or within the time allowed by any extensions. 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; amended Mar. 29, 2019, eff. July 1, 2019.

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, stating whether the party shall appear in person or remotely, including by telephone or video conference, 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, 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, in person, or remotely, including by telephone or video conference, 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 in person or remotely, including telephone or video conference. 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, telephone and video conference service 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 and telephone and video conference service 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; amended Sept. 29, 2021, eff. Oct. 1, 2021.

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 278-79. Reserved

Part I. Credit Card or Debt Buyer Collection Actions

Rule 280. Applicability.

A civil action is subject to the requirements of this Part if the complaint contains any claim originating from a credit card or by a debt buyer attempting to collect a consumer debt.

Adopted June 8, 2018, eff. Oct. 1, 2018.

Rule 280.1. Definitions for Credit Card or Debt Buyer Collection Actions.

For purposes of a civil action subject to the requirements of this Part:

(a) "Affidavit" means an affidavit or a verification under Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109).

(b) "Assignment" means a transfer of debt from the owner of the debt to the purchaser of the debt.

(c) "Charge-off balance" means an account principal and other legally collectible costs, expenses, and interest accrued prior to the charge-off date, less any payments or settlement.

(d) "Charge-off creditor" means the person or entity who extended credit to the natural persons involved in a consumer credit transaction on the charge-off date.

(e) "Charge-off date" means the date on which a receivable is treated as a loss or expense.

(f) "Consumer credit transaction" means a transaction between a natural person and another person in which property, service, or money is acquired on credit by that natural person from such other person primarily for personal, family, or household purposes.

(g) "Consumer debt" or "consumer credit" means money, property, or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction.

(h) "Credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate or any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit or in consideration or an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder.

(i) "Debt buyer" means a person or entity that is engaged in the business of purchasing delinquent or charged-off consumer loans or consumer credit accounts or other delinquent consumer debt for collection purposes, whether it collects the debt itself or hires a third-party

for collection or an attorney at law for litigation in order to collect such debt.

(j) "Debt buyer collection action" means a civil action in which the complaint seeks to recover on a consumer debt purchased by a debt buyer.

(k) "Original consumer debt" means the amount of the charge-off balance.

(l) "Payment" means any payment received by a charge-off creditor or a debt buyer, pre- or post-charge-off, that was not returned by the financial institution against which the payment was drawn.

(m) "Person" means any natural person or business entity of any kind, including but not limited to a corporation, partnership, limited partnership, limited liability partnership, or limited liability company.

(n) "Principal" means the unpaid balance of the amount borrowed in any consumer credit transaction, not including any interest, fees, or other charges.

Adopted June 8, 2018, eff. Oct. 1, 2018; amended Nov. 4, 2020, eff. immediately.

Rule 280.2. Complaint in Credit Card or Debt Buyer Collection Actions.

In addition to the requirements set forth in Rules 131 and 282(a), the complaint in a credit card or debt buyer collection actions shall:

(a) Print the name of the person who signs the complaint under the signature line;

(b) Attach a completed Credit Card or Debt Buyer Collection Affidavit, prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix;

(c) In addition to the affidavit, the plaintiff shall attach one of the following to the complaint:

(1) The written contract giving rise to the debt that is the subject of the complaint (the "Consumer Debt"); or

(2) If the case is based on an unwritten contract, a copy of a document provided to the consumer while the account was active, demonstrating that the consumer debt was incurred by the consumer. For a revolving credit account, a statement reflecting the charge-off balance shall be deemed sufficient to satisfy this requirement. The statement reflecting the charge-off balance will not reflect any post-charge-off payments or credits by or to the charge-off creditor, the debt buyer, or their attorneys.

(d) Include a statement that the suit is filed within a relevant statute of limitations; and

(e) Have the Credit Card or Debt Buyer Collection Affidavit signed by the plaintiff or the plaintiff's designated agent. For purposes of this Rule, the attorney for the plaintiff may not sign the affidavit on behalf of the plaintiff or plaintiff's designated agent.

Adopted June 8, 2018, eff. Oct. 1, 2018; amended July 19, 2019, eff. Nov. 1, 2019.

Rule 280.3. Continuance of Trial or Voluntary Dismissal of Credit Card or Debt Buyer Collection Actions.

Absent a properly noticed written motion for continuance under Rule 231 or for voluntary dismissal under section 2-1009 of the Code of Civil Procedure (735 ILCS 5/2-1009), a motion for continuance or voluntary dismissal made on the date of trial shall be denied, and the case shall proceed to trial, unless:

(a) The court finds that (i) each party has consented to a continuance with an understanding of the potential consequences of not consenting and (ii) a continuance serves the interest of justice; or

(b) The court is unable to proceed on the trial date, in which case an order may be entered continuing the case for a final trial date.

(c) Nothing herein shall limit the right of any litigant to seek a continuance subject the provisions and requirements of Rule 231(f).

Adopted June 8, 2018, eff. Oct. 1, 2018.

Rule 280.4. Consequences for Non-Compliance.

If the plaintiff fails to comply with the requirements of this Part, the court may not enter a default judgment, and the court, on motion or on its own initiative, may dismiss the complaint.

Adopted June 8, 2018, eff. Oct. 1, 2018.

Rule 280.5. Identity Theft Relating to Credit Card or Debt Buyer Collection Actions.

(a) A defendant in a credit card or debt buyer collection action who asserts that he or she is a victim of identity theft with respect to the consumer debt that is the subject of the action, must serve the following on the plaintiff:

(1) An Identity Theft Affidavit in accordance with the form approved by the Illinois Attorney General; and

(2) An Identity Theft Affidavit (Credit Card or Debt Buyer Collection Action) in accordance with the form approved by the Illinois Supreme Court, which can be found in the Article II Forms Appendix.

Of these two affidavits, only the Identity Theft Affidavit (Credit Card or Debt Buyer Collection Action) must be filed with the court. Within 90 days of service of the Identity Theft Affidavit (Credit Card or Debt Buyer Collection Action) on the plaintiff, the plaintiff or the court, on its motion, shall dismiss the case unless the plaintiff files an affidavit asserting facts that indicate the defendant is not the victim of identity theft and is responsible for the consumer debt at issue.

Adopted June 8, 2018, eff. Oct. 1, 2018.

Part J. 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 $10,000, exclusive of interest and costs.

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; amended Sept. 29, 2021, eff. Jan. 1, 2022.

Committee Comments

(Revised January 1, 2022)

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 281 was amended effective January 1, 2022, to remove tax collection cases up to $10,000 from being filed as a small claims case.

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 a summons containing an affidavit setting forth the defendant's last known mailing address.

(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 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.

(c) The return receipt, when returned to the clerk, shall be filed by the clerk. 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 $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 $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 K. 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.

(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 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 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 to the Commission and all other parties in interest by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

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).

Adopted April 3, 2017, eff. immediately.

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.

Rule 294. Disqualification of Lawyer Serving in Collaborative Process and Lawyers in Associated Law Firm.

(a) Except as provided in paragraph (c), a lawyer serving or who has served as a collaborative process lawyer, as defined in the Collaborative Process Act (750 ILCS 90/1 *et seq.*), is disqualified from appearing before a tribunal to represent any party in a proceeding relating to the collaborative process matter in which the lawyer serves or served as a collaborative process lawyer. Further, a lawyer serving or who has served as a collaborative process lawyer must withdraw from the representation if the collaborative process fails.

(b) A disqualification prescribed by paragraph (a) is imputed to all lawyers in a law firm with which the lawyer disqualified by paragraph (a) is associated and may not be waived; nor may the disqualification of any lawyer be removed by screening.

(c) A lawyer otherwise disqualified by paragraphs (a) or (b) may represent a party before a tribunal:

(1) to comply with the procedural rules of the tribunal as necessary to facilitate the collaborative process;

(2) to seek approval of an agreement resulting from the collaborative process; or

(3) to seek or defend a petition for an emergency order to protect the health, safety, welfare, or interest of a party or person eligible for protection under applicable law.

Adopted June 8, 2018, eff. July 1, 2018.

Rule 295. Matters Assignable to Associate Judges

The chief judge of each circuit or any circuit judge designated by him or her may assign an associate judge to hear and determine any matters deemed suitable by the chief judge or designated circuit judge, including the trial 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; amended June 6, 2019, eff. July 1, 2019.

Rule 296. Use of Restraints in Court Proceedings Under the Mental Health and Developmental Disabilities Code.

(a) General. In all proceedings before a court on a petition for involuntary admission pursuant to section 3-701 *et seq.* of the Mental Health and Developmental Disabilities Code (405 ILCS 5/3-701 *et seq.*) and/or a petition for the administration of psychotropic medication and/or

electroconvulsive therapy pursuant to section 2-107.1 of the Mental Health and Developmental Disabilities Code (405 ILCS 5/2-107.1) and/or a petition for judicial admission for persons with intellectual disabilities pursuant to section 4-501 of the Mental Health and Developmental Disabilities Code (405 ILCS 5/4-501), the respondent named in such petition shall not be placed in restraints, unless, prior to any appearance on any such petition, the court shall conduct a separate hearing on the record as to the manifest necessity for such restraints. The respondent and the respondent's attorney shall have the opportunity to be present and to be heard at such hearing. A court's finding of manifest necessity shall be based on whether there is a threat to persons present at the hearing, a risk of elopement, or when necessary to maintain order during the proceeding. The following factors, among others, may be considered in making this decision:

(1) the specific acts or conduct alleged to have been performed by the respondent named in the petition filed with the court;

(2) as to whether the respondent poses a risk of danger to him/herself or others:

(A) any prior use of restraints in a court proceeding or clinical setting;

(B) prior history of acts of physical aggression toward him/herself or others;

(3) as to whether there is a risk of elopement:

(A) the respondent's physical ability to elope;

(B) motivational factors such as psychotic delusion or severe social stressors;

(C) any past elopements, attempted elopements, or evidence of any present plan to elope;

(D) risk from an external support system that may aid in elopement;

(E) the physical security of the courtroom or the room in which the proceeding is being held, including the number of entrances and exits, the number of guards necessary to provide security, and the adequacy and availability of alternative security arrangements.

(b) Evidence and Risk Assessment. For the purpose of the restraint hearing only, the court may consider an assessment as to the risk of respondent's dangerousness, elopement potential, and/or current clinical mental health status, prepared and signed by a person who is familiar with the respondent and who has been trained and certified in preparing risk assessments, such as a physician, clinical psychologist, clinical social worker, clinical professional counselor, or registered nurse with supervisory responsibilities. Any such risk assessment shall be provided to the court and counsel prior to the commencement of the hearing by the agency transporting the person. The assessment can be considered by the court only for a determination as to the use of restraints, unless counsel stipulate to its use otherwise. During the hearing, at the court's discretion, all counsel may either present evidence or make proffers and arguments that are relevant to the court's consideration of the use of restraints. At the court's discretion, the respondent may remain shackled during the restraint hearing.

(c) Findings of Fact. If the court finds that restraints are manifestly necessary, the court shall state its findings of fact on the record as to the basis for the order entered.

(d) Use of Restraints. If a decision is made to use restraints, the court must allow the least

restrictive restraints necessary. Under no circumstances should a respondent be restrained to another person, a wall, the floor, or furniture while in the courtroom.

Adopted Mar. 21, 2019, eff. immediately.

COMMITTEE COMMENTS

In the case of *In re Benny M.*, 2017 IL 120133, ¶ 34, the Supreme Court held that the use of restraints on a respondent in an involuntary treatment proceeding should only be used upon a finding of manifest necessity. A finding of manifest necessity must be based on the risk of flight, threats to the safety of people in the courtroom, or maintaining order during the hearing. *Id.* ¶ 34.

Adult criminal, juvenile delinquency, and mental health cases should all maintain a dignified judicial process that includes the respectful treatment of those persons who are subjects of the court proceedings. *Id.* ¶ 28. The formal dignity reflects the importance of the matters at issue and a seriousness of purpose that helps to inspire confidence in the judicial system. *Id.*

Respondents named in these petitions are routinely seen by mental health professionals prior to filing of the petitions. These professionals prepare assessments as to the risk that the respondent may be to him/herself and others, and these assessments may be relevant to the respondent's dangerousness, elopement potential, and current clinical mental health status. When an assessment is prepared by appropriate personnel, after noting that all parties have received the risk assessment, a court should be able to consider the factors set forth in the report along with the evidence and/or proffers and arguments of counsel to make its findings as to the manifest necessity regarding the use of any restraints. This, of course, does not limit the court from hearing other evidence on the issue of restraints if deemed necessary.

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 full or partial waiver of assessments 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 "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 set the Application for a

hearing requiring the applicant to appear in person. The court may order the applicant to produce copies of specified 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 specifying the reasons for the denial. If the court determines that the conditions for a full assessment waiver under 735 ILCS 5/5-105(b)(1) are satisfied, it shall enter an order permitting the applicant to sue or defend without payment of assessments, costs or charges. If the court determines that the conditions for a partial assessment waiver under 735 ILCS 5/5-105(b)(2) are satisfied, it shall enter an order permitting the applicant to sue or defend after payment of a specified percentage of assessments, costs, or charges. If an Application for a partial assessment waiver is granted, and if necessary to avoid undue hardship on the applicant, the court may allow the applicant to defer payment of assessments, costs, and charges, make installment payments, or make payment upon reasonable terms and conditions stated in the order.

(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, and that party shall be allowed to sue or defend without payment of assessments, 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.

Amended October 20, 2003, effective November 1, 2003; amended September 25, 2014, eff. immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Feb. 13, 2019, eff. July 1, 2019.

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

Article III. Civil Appeals Rules

Part A. Appeals from the Circuit Court

Rule 301. Method of Review

Every final judgment of a circuit court in a civil case is appealable as of right. The appeal is initiated by filing a notice of appeal. No other step is jurisdictional. An appeal is a continuation of the proceeding.

Amended December 17, 1993, effective February 1, 1994.

Committee Comments
(Revised July 1, 1971)

This rule, adopted pursuant to the authority given the Supreme Court by the judicial article effective January 1, 1964, former article VI, section 7, present article VI, section 16, prescribes the method of review of final judgments. The rule was primarily based upon and replaced former sections 74, 76(2), and 80 of the Civil Practice Act. The next to last sentence of the rule was intended to incorporate and restate the provisions of the last two sentences of former section 74(1).

Supersedure of statutory provisions relating to appeals is covered by Rule 1.

Commentary
(December 17, 1993)

The last two sentences concerning a writ of error have been deleted because they are outdated. The notice of appeal preserves for review all judgments and orders specified therein.

Rule 302. Direct Appeals to the Supreme Court

(a) Cases Directly Appealable. Appeals from final judgments of circuit courts shall be taken directly to the Supreme Court (1) in cases in which a statute of the United States or of this state has been held invalid, and (2) in proceedings commenced under Rule 21(d) of this court. For purposes of this rule, invalidity does not include a determination that a statute of this state is

preempted by federal law.

(b) Cases in Which the Public Interest Requires Expeditious Determination. After the filing of the notice of appeal to the Appellate Court in a case in which the public interest requires prompt adjudication by the Supreme Court, the Supreme Court or a justice thereof may order that the appeal be taken directly to it. Upon the entry of such an order any documents already filed in the Appellate Court shall be transmitted by the clerk of that court to the clerk of the Supreme Court. From that point the case shall proceed in all respects as though the appeal had been taken directly to the Supreme Court.

(c) Summary Disposition.

(1) The Supreme Court, after the briefs have been filed, may dispose of any case without oral argument or opinion if no substantial question is presented or if jurisdiction is lacking.

(2) The Supreme Court, on its own motion or upon the motion of a party, before or after any brief has been filed or oral argument held, may summarily vacate and remand a judgment of the circuit court for noncompliance with Rule 18. Such vacatur shall not constitute a determination on the merits of the constitutional question presented.

Amended effective July 1, 1971. (An amendment of June 29, 1978, was to have abolished direct appeals in proceedings to review orders of the Industrial Commission. The amendment was to have been effective January 1, 1979. On December 1, 1978, the effective date of the amendment was postponed until July 1, 1979. On June 1, 1979, the amendment was rescinded.) Amended August 9, 1983, effective October 1, 1983; amended February 1, 1984, effective February 1, 1984, with Justice Moran dissenting (see *Yellow Cab Co. v. Jones* (1985), 108 Ill. 2d 330, 342); amended July 27, 2006, effective September 1, 2006; amended October 4, 2011, effective immediately.

Committee Comment
(July 27, 2006)

The amendment to Rule 302(c) recognizes that the Supreme Court may summarily vacate and remand any circuit court judgment that fails to comply with Rule 18.

Rule 303. Appeals from Final Judgments of the Circuit Court in Civil Cases

(a) Time; Filing; Transmission of Notice of Appeal.

(1) The notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order, irrespective of whether the circuit court had entered a series of final orders that were modified pursuant to postjudgment motions. A judgment or order is not final and appealable while a Rule 137 claim remains pending unless the court enters a finding pursuant to Rule 304(a). A notice of appeal filed after the court announces a decision, but before the entry of the judgment or order, is treated as filed on the date of and after the entry of the judgment or

order. The notice of appeal may be filed by any party or by any attorney representing the party appealing, regardless of whether that attorney has filed an appearance in the circuit court case being appealed.

(2) When a timely postjudgment motion has been filed by any party, whether in a jury case or a nonjury case, a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion, or before the final disposition of any separate claim, becomes effective when the order disposing of said motion or claim is entered. A party intending to challenge an order disposing of any postjudgment motion or separate claim, or a judgment amended upon such motion, must file a notice of appeal, or an amended notice of appeal within 30 days of the entry of said order or amended judgment, but where a postjudgment motion is denied, an appeal from the judgment is deemed to include an appeal from the denial of the postjudgment motion. No request for reconsideration of a ruling on a postjudgment motion will toll the running of the time within which a notice of appeal must be filed under this rule.

(3) If a timely notice of appeal is filed and served by a party, any other party, within 10 days after service upon him or her, or within 30 days from the entry of the judgment or order being appealed, or within 30 days of the entry of the order disposing of the last pending postjudgment motion, whichever is later, may join in the appeal, appeal separately, or cross-appeal by filing a notice of appeal, indicating which type of appeal is being taken.

(4) Within five days after the filing of a notice of appeal, or an amendment of a notice of appeal filed in the circuit court pursuant to subparagraph (b)(5) of this rule, the clerk of the circuit court shall file the notice of appeal or of the amendment with the clerk of the court to which the appeal is being taken.

(b) Form and Contents of Notice of Appeal.

(1) The notice of appeal shall be captioned as follows:

(i) At the top shall appear the statement "Appeal to the _____ Court," naming the court to which the appeal is taken, and below this shall be the statement "From the Circuit Court of _____," naming the court from which the appeal is taken.

(ii) It shall bear the title of the case, naming and designating the parties in the same manner as in the circuit court and adding the further designation "appellant" or "appellee," *e.g.*, "Plaintiff-Appellee."

(iii) It shall be designated "Notice of Appeal," "Joining Prior Appeal," "Separate Appeal," or "Cross-Appeal," as appropriate.

(2) It shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court.

(3) A notice of appeal filed pursuant to Rule 302(a)(1) from a judgment of a circuit court holding unconstitutional a statute of the United States or of this state shall have appended thereto a copy of the court's findings made in compliance with Rule 18.

(4) It shall contain the name and address of each appellant or appellant's attorney.

(5) The notice of appeal may be amended without leave of court within the original 30-day period to file the notice as set forth in paragraph (a) above. Thereafter it may be amended only on motion, in the reviewing court, pursuant to paragraph (d) of this rule. Amendments relate back to the time of the filing of the notice of appeal.

(c) Service of Notice of Appeal. The party filing the notice of appeal or an amendment as of right, shall, within 7 days, file a notice of filing with the reviewing court and serve the notice of appeal upon every other party and upon any other person or officer entitled by law to notice. Proof of service, as provided by Rule 12, shall be filed with the notice.

(d) Extension of Time in Certain Circumstances. On motion supported by a showing of reasonable excuse for failure to file a notice of appeal on time, accompanied by the proposed notice of appeal and the filing fee, filed in the reviewing court within 30 days after expiration of the time for filing a notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing. If the reviewing court allows leave to file a late notice of appeal, any other party may, within 10 days of the order allowing the filing of the late notice, join in the appeal separately or cross-appeal as set forth in Rule 303(a)(3).

(e) Docketing. Upon receipt of the notice of appeal transmitted to the reviewing court pursuant to paragraph (a) of this rule, or receipt of a motion for leave to appeal under paragraph (d) of this rule, the clerk of the reviewing court shall enter the appeal upon the docket.

Amended effective January 12, 1967; amended effective January 1, 1970; amended October 21, 1969, effective January 1, 1970; amended effective July 1, 1971; amended effective September 1, 1974; amended October 1, 1976, effective November 15, 1976; amended July 30, 1979, effective October 15, 1979; amended August 9, 1983, effective October 1, 1983; amended April 27, 1984, effective July 1, 1984; amended December 17, 1993, effective February 1, 1994; corrected March 18, 2005, effective immediately; amended October 14, 2005, effective January 1, 2006; amended July 27, 2006, effective September 1, 2006; amended March 16, 2007, effective May 1, 2007; amended May 30, 2008, effective immediately; corrected June 4, 2008, effective immediately; amended Dec. 11, 2014, eff. Jan. 1, 2015; amended June 22, 2017, eff. July 1, 2017.

Committee Comments
(March 16, 2007)

Rule 303(a)(2) is intended to address concerns raised in cases such as *John G. Phillips & Assoc. v. Brown*, 197 Ill. 2d 337 (2001). Subparagraph (a)(2) protects the rights of an appellant who has filed a "premature" notice of appeal by making the notice of appeal effective when the order denying a postjudgment motion or resolving a still-pending separate claim is entered. See Fed. R. App. P. 4(a)(4)(B)(i), (a)(4)(B)(ii). The question whether a particular "claim" is a separate claim for purposes of Rule 304(a) is often a difficult one. See *Dewan v. Ford Motor Co.*, 343 Ill. App. 3d 1062 (2003); *In re Marriage of King*, 208 Ill. 2d 332 (2003); *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458 (1990); *Physicians Insurance Exchange v. Jennings*, 316 Ill. App. 3d 443 (2000); *F.H. Prince & Co., Inc. v. Towers Financial Corp.*, 266 Ill. App. 3d 977 (1994); *Servio v. Paul Roberts Auto Sales, Inc.*, 211 Ill. App. 3d 751 (1991). Subparagraph (a)(2)

protects the appellant who files a notice of appeal prior to the resolution of a still-pending claim that is determined to be a separate claim under Rule 304(a). Note that under subparagraph (a)(2), there is no need to file a second notice of appeal where the postjudgment order simply denies the appellant's postjudgment motion. However, where the postjudgment order grants new or different relief than the judgment itself, or resolves a separate claim, a second notice of appeal is necessary to preserve an appeal from such order.

Rule 304. Appeals from Final Judgments That Do Not Dispose of an Entire Proceeding

(a) Judgments As To Fewer Than All Parties or Claims−Necessity for Special Finding. If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. Such a finding may be made at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party. The time for filing a notice of appeal shall be as provided in Rule 303. In computing the time provided in Rule 303 for filing the notice of appeal, the entry of the required finding shall be treated as the date of the entry of final judgment. In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties.

(b) Judgments and Orders Appealable Without Special Finding. The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule:

(1) A judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party.

(2) A judgment or order entered in the administration of a receivership, rehabilitation, liquidation, or other similar proceeding which finally determines a right or status of a party and which is not appealable under Rule 307(a).

(3) A judgment or order granting or denying any of the relief prayed in a petition under section 2-1401 of the Code of Civil Procedure.

(4) A final judgment or order entered in a proceeding under section 2-1402 of the Code of Civil Procedure.

(5) An order finding a person or entity in contempt of court which imposes a monetary or other penalty.

(6) A custody or allocation of parental responsibilities judgment or modification of such judgment entered pursuant to the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq.*) or Illinois Parentage Act of 2015 (750 ILCS 46/101 *et seq.*).

The time in which a notice of appeal may be filed from a judgment or order appealable under this Rule 304(b) shall be as provided in Rule 303.

Amended October 21, 1969, effective January 1, 1970; amended May 28, 1982, effective July 1, 1982;

amended April 27, 1984, effective July 1, 1984; amended November 21, 1988, effective January 1, 1989; amended December 17, 1993, effective February 1, 1994; amended October 14, 2005, effective January 1, 2006; amended February 26, 2010, effective immediately; amended Mar. 8, 2016, eff. immediately.

Committee Comments
(March 8, 2016)

Special Supreme Court Committee on Child Custody Issues

The Illinois Marriage and Dissolution of Marriage Act, Pub. Act 99-90 (eff. Jan. 1, 2016) (amending 750 ILCS 5/101 *et seq.*), has changed the terms "Custody," "Visitation" (as to parents) and "Removal" to "Allocation of Parental Responsibilities," "Parenting Time" and "Relocation." These rules are being amended to reflect those changes. The rules utilize both "custody" and "allocation of parental responsibilities" in recognition that some legislative enactments covered by the rules utilize the term "custody" while the Illinois Marriage and Dissolution of Marriage Act and the Illinois Parentage Act of 2015 utilize the term "allocation of parental responsibilities." The Special Committee has attempted to adhere to the usage found in the applicable legislative enactments.

Committee Comments
(Revised September 1988)

Paragraph (a)

Paragraph (a) of this rule was adopted as Rule 304, effective January 1, 1967, to supplant former paragraph (2) of section 50 of the Civil Practice Act without change of substance but with some amplification. The supplanted statutory provision, originally adopted in 1955 (Laws of 1955, p. 2238, §1) to provide an easy method of determining when certain orders were appealable (and which orders had to be appealed at the peril of the loss of a later right of appeal), proved to be anything but easy. Because this statutory paragraph was the subject of many judicial decisions (see 1965 Supplement to Historical and Practice Notes, S.H. Ill. Ann. Stats., ch. 110, par. 50), the committee concluded that it was unwise to amend the language in any substantial fashion. In moving the provision to the rules, the committee revised the language slightly, however, to emphasize the fact that it is not the court's finding that makes the judgment final, but it is the court's finding that makes this kind of a final judgment appealable. This did not change the law. The second and third sentences, which were new in 1967, codified existing practice.

Rule 304(a) was amended in 1988 to cure the defect that compelled the Supreme Court, in *Elg v. Whittington* (1987), 119 Ill. 2d 344, to hold that the filing of post-trial motions in the trial court do not toll the time for filing a notice of appeal under Rule 304, as it does under Rule 303. This amendment clarifies Rule 304 and makes it clear that the time for filing a notice of appeal under Rule 304 is governed by the provisions of Rule 303 and that the date on which the trial court enters

its written finding that there is no just reason for delaying enforcement or appeal shall be treated as the date of the entry of final judgment for purposes of calculating when the notice of appeal must be filed.

Paragraph (b)

Paragraph (b), added in 1969, lists several kinds of judgments and orders that have been appealable without a finding that there is no just reason for delaying enforcement or appeal even though they may not dispose of the entire proceeding in which they have been entered or to which they may be related. This paragraph is intended to be declaratory of existing law and, in certain instances, to remove any doubt or room for argument as to whether the finding provided for in paragraph (a) may be necessary. It is not the intention of the committee to eliminate or restrict appeals from judgments or orders heretofore appealable.

Subparagraph (1) applies to orders that are final in character although entered in comprehensive proceedings that include other matters. Examples are an order admitting or refusing to admit a will to probate, appointing or removing an executor, or allowing or disallowing a claim.

In 1984 paragraph (b)(1) was amended to eliminate the reference to "conservatorship," inasmuch as the office of conservator has been eliminated.

Subparagraph (2) is comparable in scope to subparagraph (1) but excepts orders that are appealable as interlocutory orders under Rule 307. Examples of orders covered by subparagraph (2) are an order allowing or disallowing a claim and an order for the payment of fees.

Subparagraph (3) is derived from paragraph (6) of section 72 of the Civil Practice Act (Ill. Rev. Stat. 1967, ch. 110, par. 72(6)), which deals with relief from judgments after 30 days.

Subparagraph (4) is derived from paragraph (7) of section 73 of the Civil Practice Act (Ill. Rev. Stat. 1967, ch. 110, par. 73(7)), which deals with supplementary proceedings.

Judgments imposing sanctions for contempt of court are not included in the listing in paragraph (b), because a contempt proceeding is "an original special proceeding, collateral to, and independent of, the case in which the contempt arises," and a judgment imposing a fine or sentence of imprisonment for contempt is therefore final and appealable. (*People ex rel. General Motors Corp. v. Bua* (1967), 37 Ill. 2d 180, 191, 226 N.E.2d 6, 13.) The judgment thus disposes of the entire independent contempt proceeding.

Commentary
(December 17, 1993)

Paragraph (a) is amended to clarify that the trial court's order does not have to make reference to both the enforceability and the appealability of a judgment to render that judgment appealable. See *In re Application of Du Page County Collector* (1992), 152 Ill. 2d 545.

Contempt orders are added to the list of judgments appealable under paragraph (b) without a special finding. This change reflects current practice. See *People ex rel. Scott v. Silverstein* (1981), 87 Ill. 2d 167.

Committee Comments
(February 26, 2010)

Paragraph (b)

The term "custody judgment" comes from section 610 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/610), where it is used to refer to the trial court's permanent determination of custody entered incident to the dissolution of marriage, as distinguished from any temporary or interim orders of custody entered pursuant to section 603 of the Act (750 ILCS 5/603) and any orders modifying child custody subsequent to the dissolution of a marriage pursuant to section 610 of the Act (750 ILCS 5/610). The Illinois Parentage Act of 1984 also uses the term "judgment" to refer to the order which resolves custody of the subject child. See 750 ILCS 45/14.

Subparagraph (b)(6) is adopted pursuant to the authority given to the Illinois Supreme Court by article VI, sections 6 and 16, of the Illinois Constitution of 1970. The intent behind the addition of subparagraph (b)(6) was to supercede the supreme court's decision in *In re Marriage of Leopando*, 96 Ill. 2d 114, 119 (1983). In *Leopando*, the court held that the dissolution of marriage comprises a single, indivisible claim and that, therefore, a child custody determination cannot be severed from the rest of the dissolution of the marriage and appealed on its own under Rule 304(a). Now, a child custody judgment, even when it is entered prior to the resolution of other matters involved in the dissolution proceeding such as property distribution and support, shall be treated as a distinct claim and shall be appealable without a special finding. A custody judgment entered pursuant to section 14 of the Illinois Parentage Act of 1984 shall also be appealable without a special finding. The goal of this amendment is to promote stability for affected families by providing a means to obtain swifter resolution of child custody matters.

Rule 305. Stay of Judgments Pending Appeal

(a) Stay of Enforcement of Money Judgments. The enforcement of a judgment for money only, or any portion of a judgment which is for money, shall be stayed if a timely notice of appeal is filed and an appeal bond or other form of security, including, but not limited to, letters of credit, escrow agreements, and certificates of deposit, is presented to, approved by and filed with the court within the time for filing the notice of appeal or within any extension of time granted under paragraph (c) of this rule. Notice of the presentment of the bond or other form of security shall be given by the judgment debtor to all parties. The bond or other form of security ordinarily shall be in an amount sufficient to cover the amount of the judgment and costs plus interest reasonably anticipated to accrue during the pendency of the appeal. If a form of security other than an appeal bond is presented, the appellant shall have the burden of demonstrating the adequacy of such other security. If the court, after weighing all the relevant circumstances, including the amount of the judgment, anticipated interest and costs, the availability and cost of a bond or other form of security, the assets of the judgment debtor and of the judgment debtor's insurers and indemnitors, if any, and any other factors the court may deem relevant, determines that a bond or other form of security in the amount of the judgment plus anticipated interest and costs is not reasonably

available to the judgment debtor, the court may approve a bond or other form of security in the maximum amount reasonably available to the judgment debtor. In the event that the court approves a bond or other form of security in an amount less than the amount of the judgment plus anticipated interest and costs, the court shall impose additional conditions on the judgment debtor to prevent dissipation or diversion of the judgment debtor's assets during the appeal.

(b) Stays of Enforcements of Nonmoney Judgments and Other Appealable Orders. Except in cases provided for in paragraph (e) of this rule, on notice and motion, and an opportunity for opposing parties to be heard, the court may also stay the enforcement of any judgment, other than a judgment, or portion of a judgment, for money, or the enforcement, force and effect of appealable interlocutory orders or any other appealable judicial or administrative order. The stay shall be conditioned upon such terms as are just. A bond or other form of security may be required in any case, and shall be required to protect an appellee's interest in property.

(c) Extensions of Time. On motion made within the time for filing the notice of appeal or within any extension granted pursuant to this paragraph, the time for the filing and approval of the bond or other form of security may be extended by the circuit court or by the reviewing court or a judge thereof, but the extensions of time granted by the circuit court may not aggregate more than 45 days unless the parties stipulate otherwise. A motion in the reviewing court for any extension of time for the filing and approval of the bond or other form of security in the circuit court must be supported by affidavit and accompanied by a supporting record (Rule 328), if the record on appeal has not been filed.

(d) Stays by the Reviewing Court. Except in cases provided for in paragraph (e) of this rule, application for a stay ordinarily must be made in the first instance to the circuit court. A motion for a stay may be made to the reviewing court, or to a judge thereof, but such a motion must show that application to the circuit court is not practical, or that the circuit court has denied an application or has failed to afford the relief that the applicant has requested, and must be accompanied by suggestions in support of the motion and a supporting record (Rule 328), if the record on appeal has not been filed. If a stay is granted by the reviewing court or a judge thereof, the clerk shall notify the parties and transmit the certified order granting the stay to the clerk of the circuit court or administrative agency.

(e) Automatic Stay Pending Appeal of Termination of Parental Rights.

(1) An order terminating the parental rights of any person that is entered in a proceeding initiated under the Juvenile Court Act of 1987 shall be automatically stayed for 60 days after entry of the order of termination. If notice of appeal is filed with respect to the termination order within the 60 days, the automatic stay shall continue until the appeal is complete or the stay is lifted by the reviewing court. If notice of appeal is not filed within the 60 days, the automatic stay shall expire.

(2) The automatic stay under this rule shall stay the termination order to the extent that it would permit entry of an order of adoption without the parent's consent or surrender, and shall also operate to stay the termination order with respect to any power granted to a person or agency to consent to an adoption. In all other respects the termination order shall be unaffected. For the purposes of proceedings under the Adoption Act, a person appealing the termination

of his or her rights shall be treated as a person whose parental rights have been terminated, except as provided in the first sentence of this paragraph. Neither the appeal nor the automatic stay of the termination order shall affect the trial court's continuing jurisdiction over the care, custody, visitation and support of the child, and a guardian of the child may take any authorized action other than consenting to the child's adoption.

(3) No bond shall be required with respect to a stay of adoption pending appeal of termination of parental rights.

(4)(A) A party to the Juvenile Court Act proceeding in which a termination order was entered or a party to an adoption proceeding delayed by the effect of this rule may file a motion with the reviewing court to lift the automatic stay of a termination order. The stay of an order terminating parental rights may be lifted when it is clearly in the best interests of the child on motion or by the court *sua sponte*.

(B) Motions to lift an automatic stay must be accompanied by suggestions in support of the motion and shall be served on all parties to the Juvenile Court Act proceeding and the parties to any related Adoption Act proceeding, if known. If the movant is a party to an adoption proceeding, the motion must include the caption and case number of the adoption proceeding and identify the court in which the action is pending.

(C) Motions to lift an automatic stay must be accompanied by a supporting record as provided in Rule 328. If the movant was not a party to the Juvenile Court Act proceeding and is unable to provide the supporting record, a decision on the motion shall be deferred until after the record on appeal is filed.

(D) If a stay is lifted by the reviewing court or a judge thereof, the clerk shall notify the parties and transmit the certified order lifting the stay to the clerk of the trial court. In the case of a motion filed by a party to an adoption proceeding, the clerk shall also transmit the certified order lifting the stay to the trial judge in the adoption proceeding.

(f) When Notice of Appeal Is Amended. If a notice of appeal is amended to specify parts of the judgment not specified in the original notice of appeal, the stay of the judgment described in the original notice of appeal does not extend to any added part of the judgment, but a stay of the added part may be obtained under the same conditions and by the same procedure set forth above.

(g) Condition of the Bond. If an appeal is from a judgment for money, the condition of the bond or other form of security shall be for the prosecution of the appeal and the payment of the judgment, interest, and costs in case the judgment is affirmed or the appeal dismissed unless other terms are approved by the court as provided in paragraph (a) above, except that the bond of an executor or administrator shall be conditioned upon payment in due course of administration and that the bond of a guardian for a minor or a person under legal disability shall be conditioned on payment as the guardian has funds therefor. In all other cases, the condition shall be fixed with reference to the character of the judgment.

(h) Changing the Amount, Terms, and Security of the Bond or Other Form of Security After the Appeal is Docketed. After the case is docketed in the reviewing court, that court or a judge thereof upon motion may, consistent with the provisions of paragraph (a) above, change the

amount, terms or security of the bond or other form of security, whether fixed by it or by the circuit court, and failure to comply with the order of the reviewing court or judge shall terminate the stay.

(i) Appeals by Public Agencies. If an appeal is prosecuted by a public, municipal, governmental, or quasi-municipal corporation, or by a public officer in that person's official capacity for the benefit of the public, the circuit court, or the reviewing court or a judge thereof, may stay the judgment pending appeal without requiring that any bond or other form of security be given.

(j) Insurance Policy as Bond. The filing of an insurance policy pursuant to section 392.1 of the Illinois Insurance Code (215 ILCS 5/392.1 (West 1992)) shall be considered the filing of a bond for purposes of this rule.

(k) Failure to Obtain Stay; Effect on Interests in Property. If a stay is not perfected within the time for filing the notice of appeal, or within any extension of time granted under subparagraph (c) of this rule, the reversal or modification of the judgment does not affect the right, title, or interest of any person who is not a party to the action in or to any real or personal property that is acquired after the judgment becomes final and before the judgment is stayed; nor shall the reversal or modification affect any right of any person who is not a party to the action under or by virtue of any certificate of sale issued pursuant to a sale based on the judgment and before the judgment is stayed. This paragraph applies even if the appellant is a minor or a person under legal disability or under duress at the time the judgment becomes final.

(l) Land Trust Bond. The filing of a bond or other form of security by a beneficiary under a land trust where the land trust is a party shall be considered filing of a bond for purposes of this rule.

(m) Filing with the Circuit Court Clerk. All original appeal bonds or other forms of security, whether approved by the circuit court or the reviewing court, shall be filed with the clerk of the circuit court in which the case was filed.

Amended October 21, 1969, effective January 1, 1970, and amended effective July 1, 1971; amended September 20, 1979, effective October 15, 1979; amended January 5, 1981, effective February 1, 1981; amended May 28, 1982, effective July 1, 1982; amended December 17, 1993, effective February 1, 1994; amended December 5, 2003, effective January 1, 2004; amended June 15, 2004, effective July 1, 2004; amended June 22, 2017, eff. July 1, 2017.

Commentary
(June 15, 2004)

Paragraph (a)

The amendment is designed to preserve the right of appeal. The traditional method of securing a judgment is to require an appeal bond in the amount of the judgment plus anticipated interest and costs. In recent years, changes in the insurance market have made appeal bonds costly in many cases and unavailable in some cases. When an alternative type of security (*e.g.*, letters of credit,

escrow agreement, certificate of deposit) offers comparable assurance of payment at lower cost, requiring an appeal bond needlessly increases the cost of appeal. When seeking to file a form of security other than an appeal bond, it is the judgment debtor's burden to demonstrate that the other form of security is an adequate substitute.

It is anticipated that the amount of the bond or other form of security will normally be in an amount sufficient to cover the judgment, interest, and costs. In some limited instances, however, the appeal bond requirement may be so onerous that it creates an artificial barrier to appeal, forcing a party to settle a case or declare bankruptcy. See, *e.g.*, *Price v. Philip Morris, Inc.*, 341 Ill. App. 3d 941 (2003), *vacated by supervisory order* No. 96644 (September 16, 2003). Thus, the amended rule gives the court discretion in a money judgment case to approve a bond or other form of security that covers less than the entire amount of the judgment plus anticipated interest and costs. This does not lessen the judgment debtor's obligation on the judgment, but simply allows the judgment debtor to obtain a stay of execution on the judgment pending appeal. In such a case, the last sentence of the amended rule makes clear that appropriate conditions shall be imposed to prevent the judgment debtor from dissipating assets that would otherwise be available for payment of the judgment if the appeal is unsuccessful. Thus, depending on the circumstances, a business may be precluded from selling or otherwise disposing of any of its assets outside the ordinary course of its business, or an individual might be prohibited from spending any sums other than are required for ordinary living expenses.

Paragraph (b)

This paragraph has been amended to clarify that it is inapplicable to appeals from judgments for money.

Paragraph (g)

This paragraph has been amended to be consistent with the provisions of paragraph (a) permitting, under certain circumstances, the filing of an appeal bond or other form of security in an amount less than the full amount of the judgment plus anticipated interest and costs.

Paragraph (h)

This paragraph has been amended to clarify that a motion to change the terms or the amount of the bond must be consistent with the provisions of paragraph (a).

Paragraph (m)

This paragraph has been added because the appellate court clerks may not have appropriate facilities for keeping original bonds or other forms of security.

Commentary
(December 17, 1993)

This rule has been reorganized to provide greater clarity to the practice of obtaining a stay of the trial court judgment. Paragraph (a) makes clear that the bond in a money judgment case must be sufficient to cover the entire amount of the judgment, interest and costs.

A certified copy of the reviewing court stay order transmitted to the trial court or administrative agency is substituted for the antiquated reviewing court clerk certificate, and the clerk's authority to approve security is removed.

Rule 306. Interlocutory Appeals by Permission

(a) Orders Appealable by Petition. A party may petition for leave to appeal to the Appellate Court from the following orders of the trial court:

(1) from an order of the circuit court granting a new trial;

(2) from an order of the circuit court allowing or denying a motion to dismiss on the grounds of *forum non conveniens*, or from an order of the circuit court allowing or denying a motion to transfer a case to another county within this State on such grounds;

(3) from an order of the circuit court denying a motion to dismiss on the grounds that the defendant has done nothing which would subject defendant to the jurisdiction of the Illinois courts;

(4) from an order of the circuit court granting or denying a motion for a transfer of venue based on the assertion that the defendant is not a resident of the county in which the action was commenced, and no other legitimate basis for venue in that county has been offered by the plaintiff;

(5) from interlocutory orders affecting the care and custody of or the allocation of parental responsibilities for unemancipated minors or the relocation (formerly known as removal) of unemancipated minors, if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules;

(6) from an order of the circuit court which remands the proceeding for a hearing *de novo* before an administrative agency;

(7) from an order of the circuit court granting a motion to disqualify the attorney for any party;

(8) from an order of the circuit court denying or granting certification of a class action under section 2–802 of the Code of Civil Procedure (735 ILCS 5/2-802); or

(9) from an order of the circuit court denying a motion to dispose under the Citizen Participation Act (735 ILCS 110/1 *et seq.*)

If the petition for leave to appeal an order granting a new trial is granted, all rulings of the trial court on the posttrial motions are before the reviewing court without the necessity of a cross-petition.

(b) Procedure for Petitions Under Subparagraph (a)(5).

(1) *Petition; Service; Record*. Unless another form is ordered by the Appellate Court, review of an order affecting the care and custody of or the allocation of parental responsibilities

for an unemancipated minor or the relocation of unemancipated minors as authorized in paragraph (a)(5) shall be by petition filed in the Appellate Court. The petition shall state the relief requested and the grounds for the relief requested. An appropriate supporting record shall accompany the petition, which shall include the order appealed from or the proposed order, and any supporting documents or matters of record necessary to the petition. The supporting record must be authenticated by the certificate of the clerk of the trial court or by the affidavit of the attorney or party filing it. The petition, supporting record and the petitioner's legal memorandum, if any, shall be filed in the Appellate Court within 14 days of the entry or denial of the order from which review is being sought, with proof of personal or e-mail service as provided in Rule 11. The petition for leave to appeal must also be served upon the trial court judge who entered the order from which leave to appeal is sought.

(2) *Legal Memoranda*. With the petition, the petitioner may file a memorandum, not exceeding 15 pages or, alternatively, 4,500 words. The respondent or any other party or person entitled to be heard in the case may file, with proof of personal or e-mail service as provided in Rule 11, a responding memorandum within five business days following service of the petition and petitioner's memorandum. A memorandum by the respondent or other party may not exceed 15 pages or, alternatively, 4,500 words.

(3) *Replies; Extensions of Time*. Except by order of court, no replies will be allowed and no extension of time will be allowed.

(4) *Variations by Order of Court*. The Appellate Court may, if it deems it appropriate, order a different schedule, or order that no memoranda be filed, or order that other materials need not be filed.

(5) *Procedure if Leave to Appeal Is Granted*. If leave to appeal is granted, the circuit court and the opposing parties shall be served with the order granting leave to appeal. All proceedings shall then be subject to the expedited procedures set forth in Rule 311(a). A party may allow his or her petition or answer to stand as his or her brief or may elect to file a new brief. In order to allow a petition or answer to stand as a brief, the party must notify the other parties and the clerk of the Appellate Court on or before the due date of the brief.

(c) Procedure for All Other Petitions Under This Rule.

(1) *Petition*. The petition shall contain a statement of the facts of the case, supported by reference to the supporting record, and of the grounds for the appeal. The petition shall be filed in the Appellate Court in accordance with the requirements for briefs within 30 days after the entry of the order. A supporting record conforming to the requirements of Rule 328 shall be filed with the petition.

(2) *Answer.* Any other party may file an answer within 21 days of the filing of the petition, together with a supplementary supporting record conforming to Rule 328 consisting of any additional parts of the record the party desires to have considered by the Appellate Court. No reply will be received except by leave of court or a judge thereof.

(3) *Appendix to Petition.* The petition shall include, as an appendix, the order appealed from, and any opinion, memorandum, or findings of fact entered by the trial judge, and a table

of contents of the record on appeal in the form provided in Rule 342(a).

(4) *Extensions of Time.* The above time limits may be extended by the reviewing court or a judge thereof upon notice and motion, accompanied by an affidavit showing good cause, filed before expiration of the original or extended time.

(5) After the petitioner has filed the petition and supporting record and the time for filing any answer has expired, the Appellate Court, except for good cause shown, shall decide whether to allow the interlocutory appeal within 30 days.

(6) *Stay; Notice of Allowance of Petition.* If the petition is granted, the proceedings in the trial court are stayed. Upon good cause shown, the Appellate Court or a judge thereof may vacate or modify the stay, and may require the petitioner to file an appropriate bond. Within 48 hours after the granting of the petition, the Appellate Court clerk shall notify the clerk of the circuit court.

(7) *Additional Record.* If leave to appeal is allowed, any party to the appeal may request that additional portions of the record on appeal be prepared as provided in Rule 321 *et seq.*, or any party may request or the court may order the circuit clerk to file the record, which shall be filed within 35 days of the date on which such leave was allowed. The filing of an additional record shall not affect the time for filing briefs under this rule.

(8) *Briefs.* A party may allow his or her petition or answer to stand as his or her brief or may file a brief in lieu of or in addition thereto. If a party elects to allow a petition or answer to stand as a brief, he or she must notify the other parties and the clerk of the Appellate Court on or before the due date of the brief. If the appellant elects to file a brief, it must be filed within 35 days from the date on which leave to appeal was granted. All briefs shall conform to the schedule and requirements as provided in Rules 341 through 343. Oral argument may be requested as provided in Rule 352(a).

Amended October 21, 1969, effective January 1, 1970, and amended effective September 1, 1974; amended July 30, 1979, effective October 15, 1979; amended February 19, 1982, effective April 1, 1982; amended May 28, 1982, effective July 1, 1982; amended June 15, 1982, effective July 1, 1982; amended August 9, 1983, effective October 1, 1983; amended September 16, 1983, effective October 1, 1983; amended December 17, 1993, effective February 1, 1994; amended March 26, 1996, effective immediately; amended December 31, 2002, effective January 1, 2003; amended December 5, 2003, effective January 1, 2004; amended May 24, 2006, effective September 1, 2006; amended February 26, 2010, effective immediately; amended February 16, 2011, effective immediately; amended May 29, 2014, eff. July 1, 2014; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended Mar. 8, 2016, eff. immediately; amended June 22, 2017, eff. July 1, 2017; amended June 28, 2017, eff. July 1, 2017; amended Sept. 15, 2017, eff. Nov. 1, 2017; amended Sept. 26, 2019, eff. Oct. 1, 2019; amended Sept. 30, 2020, eff. Oct. 1, 2020.

Committee Comment
(March 8, 2016)

Special Supreme Court Committee on Child Custody Issues

The Illinois Marriage and Dissolution of Marriage Act, Pub. Act 99-90 (eff. Jan. 1, 2016) (amending 750 ILCS 5/101 *et seq.*), has changed the terms "Custody," "Visitation" (as to parents) and "Removal" to "Allocation of Parental Responsibilities," "Parenting Time" and "Relocation." These rules are being amended to reflect those changes. The rules utilize both "custody" and "allocation of parental responsibilities" in recognition that some legislative enactments covered by the rules utilize the term "custody" while the Illinois Marriage and Dissolution of Marriage Act and the Illinois Parentage Act of 2015 utilize the term "allocation of parental responsibilities." The Special Committee has attempted to adhere to the usage found in the applicable legislative enactments.

Committee Comment
(May 29, 2014)

Subparagraph (c)(5)

In exceptional circumstances or by agreement of the parties, it may be appropriate for the parties to continue with certain aspects of the case (such as discovery, for example), provided that such continuation does not interfere with appellate review or otherwise offend the notions of substantial justice. If the stay is vacated or modified, the trial court remains (as with any interlocutory appeal) restrained from entering an order which interferes with the appellate review, such as modifying the trial court order that is the subject of the appeal.

Committee Comments
(February 26, 2010)

In 2010, this rule was reorganized and renumbered for the sake of clarity. No substantive changes were made in this revision.

Paragraph (b)

Paragraph (b) was added to Rule 306 in 2004 to provide a special, expedited procedure to be followed in petitioning for leave to appeal from interlocutory orders affecting the care and custody of unemancipated minors. This procedure applies only to petitions for leave to appeal filed pursuant to subparagraph (a)(5) of this rule. The goal of this special procedure is to provide a faster means for achieving permanency for not only abused or neglected children, but also children whose custody is at issue in dissolution of marriage, adoption, and other proceedings.

Paragraph (c)

Paragraph (c) sets forth the procedures to be followed in petitioning for leave to appeal

pursuant to any subparagraph of paragraph (a) except subparagraph (a)(5).

Subparagraph (c)(1)

This subparagraph was amended in 1979 to reflect changes in Rule 321 that eliminated the requirement that a praecipe for the record be filed.

Subparagraph (c)(2)

Subparagraph (c)(2) permits answers to the petition to be filed within 21 days after the due date of the petition instead of "within 15 days after the petition is served upon him." They are not required to be printed as formerly, but may also be otherwise duplicated as are briefs. Former Rule 30 was silent as to a reply. Subparagraph (c)(2) provides that there shall be no reply except by leave.

Subparagraph (c)(3)

As originally promulgated, and as amended in 1974, this subparagraph provided that "excerpts from record" or an abstract should be filed. This represented a change from former Rule 30, which required the filing of a printed abstract of record. It was amended in 1979 to delete reference to "excerpts from record" to reflect the changes made in that year to provide for the hearing of most appeals on the original record, thus dispensing with the reproduction of "excerpts" from the record, and with an abstract as well, unless the court orders that one must be prepared. See the committee comments to Rule 342.

Subparagraph (c)(4)

Subparagraph (c)(4) is a general provision for extensions of time and does not change the practice in existence at the time of the adoption of the rule. In 1982, this subparagraph was reworded but not changed in substance.

Subparagraph (c)(5)

Subparagraph (c)(5) provides that the granting of the appeal from an order allowing a new trial *ipso facto* operates as a stay. The former rule required the giving of some kind of a bond to make a stay effective. A bond is not always appropriate. Subparagraph (c)(5) requires a bond only after a showing of good cause.

Subparagraph (c)(6)

As originally adopted Rule 343 provided that in cases in which a reviewing court grants leave to appeal, or allows an appeal as a matter of right, the appellant must file his brief within 35 days of the order allowing the appeal, and that in cases in which a party allows his petition for leave to appeal or his answer to such a petition to stand as his brief, he must notify the other parties and the

clerk of the reviewing court. These provisions were applicable to all cases in which leave to appeal was required, whether to the Appellate Court or the Supreme Court. Rules 306(c)(6), 308(d), and 315(g) provided for the briefing schedule by cross-reference to Rule 343. In 1974, Rule 315(g), dealing with briefs in appeals to the Supreme Court from the Appellate Court, was amended to provide in detail for the filing of briefs, leaving the general language in Rule 343(a) relating to the filing of the appellant's brief in cases taken on motion for leave to appeal applicable only to appeals under Rules 306 and 308, and the provision for notice of intention to let the petition or answer stand as a brief applicable only to appeals under Rule 306. In the interest of clarity these provisions were placed in Rules 306(c)(6) and 308(d) and the general language deleted from Rule 343(a). This represents no change in practice. The briefing schedule after the due date of the appellant's brief (35 days for the appellee's brief and 14 days for a reply brief) remains governed by Rule 343(a).

Subparagraph (c)(7)

Former Rule 30 provided that after allowance of the appeal and the filing of the stay bond, "The case is then pending on appeal." This obvious fact was omitted from Rule 306 as unnecessary. Subparagraph (c)(7) does provide that if the appeal is granted oral argument may be requested as provided in Rule 352.

Committee Comments
(Revised September 1983)

This rule replaced former Rule 30, which was in effect from January 1, 1964, to December 31, 1966, and which in turn was derived from former section 77(2) of the Civil Practice Act, repealed effective January 1, 1964 (Laws of 1963, p. 2691, § 2). The Judicial Article of the new Illinois constitution (art. VI, § 6) contains substantially the same language on interlocutory appeals that appeared in the 1964 Judicial Amendment, and authorizes this rule in the following language:

"The Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of the Circuit Courts."

Paragraph (a)

Paragraph (a), as originally adopted, made no change in the prior rule except to permit the petition to be duplicated in the same manner as a brief (see Rule 344) instead of always being printed. The petition is to be filed within 30 days, subject to an extension of time under paragraph (e).

Paragraph (a) was amended in 1969 by adding subparagraph (2), denominating as subparagraph (1) what was formerly entire paragraph (a), and making appropriate changes in the headings. Subparagraph (2), together with Rule 366(b)(2)(v), also added in 1969, abrogates the ruling in *Keen v. Davis*, 108 Ill. App. 2d 55, 63-64 (5th Dist. 1969), denying reviewability, on appeal from an order allowing a new trial, of questions raised by other rulings of the trial court on

the post-trial motion. Revised Rule 366(b)(2)(v) makes it clear that the absence of a final judgment is not a bar to review of all the rulings of the trial court on the post-trial motions. See the Committee Comments to that rule.

In 1982, paragraph (a)(1) was amended by adding subparagraphs (i), (ii), (iii), and (iv), expanding the instances in which appeals could be sought in the appellate court. Also in 1982, subparagraph (a)(2) was amended to make it clear that post-trial motions are before the reviewing court without the necessity of filing a cross-appeal only when the appellate court has granted a petition for leave to appeal an order granting a new trial.

In 1983, paragraph (a)(1)(ii) was amended to permit a party to seek leave to appeal from a circuit court order allowing or denying a motion to transfer a case to another county within Illinois on the grounds of *forum non conveniens.* See *Torres v. Walsh* (1983), 97 Ill. 2d 338; *Mesa v. Chicago & North Western Transportation Co.* (1933), 97 Ill. 2d 356.

Paragraph (b)

Paragraph (b) was amended in 1979 to reflect changes in Rule 321 that eliminated the requirement that a praecipe for record be filed.

Paragraph (c)

Paragraph (c) permits answers to the petition to be filed within 21 days after the due date of the petition instead of "within 15 days after the petition is served upon him." They are not required to be printed as formerly, but may also be otherwise duplicated as are briefs. Former Rule 30 was silent as to a reply. Paragraph (c) provides that there shall be no reply except by leave.

Paragraph (d)

As originally promulgated, and as amended in 1974, paragraph (d) provided that "excerpts from record" or an abstract should be filed. This represented a change from former Rule 30, which required the filing of a printed abstract of record. It was amended in 1979 to delete reference to "excerpts from record" to reflect the changes made in that year to provide for the hearing of most appeals on the original record, thus dispensing with the reproduction of "excerpts" from the record, and with an abstract as well, unless the court orders that one must be prepared. See the committee comments to Rule 342.

Paragraph (e)

Paragraph (e) is a general provision for extensions of time and does not change the practice in existence at the time of the adoption of the rule. In 1982, this paragraph was reworded but not changed in substance.

Paragraph (f)

Paragraph (f) provides that the granting of the appeal from an order allowing a new trial *ipso facto* operates as a stay. The former rule required the giving of some kind of a bond to make a stay effective. A bond is not always appropriate. Paragraph (f) requires a bond only after a showing of good cause.

Paragraph (g)

As originally adopted Rule 343 provided that in cases in which a reviewing court grants leave to appeal, or allows an appeal as a matter of right, the appellant must file his brief within 35 days of the order allowing the appeal, and that in cases in which a party allows his petition for leave to appeal or his answer to such a petition to stand as his brief, he must notify the other parties and the clerk of the reviewing court. These provisions were applicable to all cases in which leave to appeal was required, whether to the Appellate Court or the Supreme Court. Rules 306(g), 308(d), and 315(g) provided for the briefing schedule by cross-reference to Rule 343. In 1974, Rule 315(g), dealing with briefs in appeals to the Supreme Court from the Appellate Court, was amended to provide in detail for the filing of briefs, leaving the general language in Rule 343(a) relating to the filing of the appellant's brief in cases taken on motion for leave to appeal applicable only to appeals under Rules 306 and 308, and the provision for notice of intention to let the petition or answer stand as a brief applicable only to appeals under Rule 306. In the interest of clarity these provisions were placed in Rules 306(g) and 308(d) and the general language deleted from Rule 343(a). This represents no change in practice. The briefing schedule after the due date of the appellant's brief (35 days for the appellee's brief and 14 days for a reply brief) remains governed by Rule 343(a).

Paragraph (h)

Former Rule 30 provided that after allowance of the appeal and the filing of the stay bond, "The case is then pending on appeal." This obvious fact was omitted from Rule 306 as unnecessary. Paragraph (h) does provide that if the appeal is granted oral argument may be requested as provided in Rule 352.

Rule 307. Interlocutory Appeals as of Right

(a) Orders Appealable; Time. An appeal may be taken to the Appellate Court from an interlocutory order of court:

(1) granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction;

(2) appointing or refusing to appoint a receiver or sequestrator;

(3) giving or refusing to give other or further powers or property to a receiver or sequestrator already appointed;

(4) placing or refusing to place a mortgagee in possession of mortgaged premises;

(5) appointing or refusing to appoint a receiver, liquidator, rehabilitator, or other similar officer for a bank, savings and loan association, currency exchange, insurance company, or

other financial institution, or granting or refusing to grant custody of the institution or requiring turnover of any of its assets;

(6) terminating parental rights or granting, denying or revoking temporary commitment in adoption proceedings commenced pursuant to section 5 of the Adoption Act (750 ILCS 50/5);

(7) determining issues raised in proceedings to exercise the right of eminent domain under section 20-5-10 of the Eminent Domain Act, but the procedure for appeal and stay shall be as provided in that section.

Except as provided in paragraphs (b) and (d), the appeal must be perfected within 30 days from the entry of the interlocutory order by filing a notice of appeal designated "Notice of Interlocutory Appeal" conforming substantially to the notice of appeal in other cases. A Rule 328 supporting record must be filed in the Appellate Court within the same 30 days unless the time for filing the Rule 328 supporting record is extended by the Appellate Court or any judge thereof. A Rule 328 supporting record shall not be filed in cases arising under the Juvenile Court Act where an order terminating parental rights has been entered. In those cases, a Rule 323 record shall be filed.

(b) Motion to Vacate. If an interlocutory order is entered on *ex parte* application, the party intending to take an appeal therefrom shall first present, on notice, a motion to the trial court to vacate the order. An appeal may be taken if the motion is denied, or if the court does not act thereon within 7 days after its presentation. The 30 days allowed for taking an appeal and filing the Rule 328 supporting record begins to run from the day the motion is denied or from the last day for action thereon.

(c) Time for Briefs. Unless the Appellate Court orders a different schedule or orders that no briefs be filed, the schedule for filing briefs shall be as follows: The brief of appellant shall be filed in the Appellate Court, with proof of service, within 7 days from the filing of the Rule 328 supporting record. Within 7 days from the date appellant's brief is filed, the appellee shall file his brief and any supplemental Rule 328 supporting record in the Appellate Court with proof of service. Within 7 days from the date appellee's brief is filed, appellant may serve and file a reply brief. The briefs shall otherwise conform to the requirements of Rules 341 through 344.

(d) Appeals of Temporary Restraining Orders; Time; Memoranda.

(1) *Petition; Service; Record.* Unless another form is ordered by the Appellate Court, review of the granting or denial of a temporary restraining order or an order modifying, dissolving, or refusing to dissolve or modify a temporary restraining order as authorized in paragraph (a) shall be by petition filed in the Appellate Court, but notice of interlocutory appeal as provided in paragraph (a) shall also be filed in the circuit court, within the same time for filing the petition. The petition shall state the relief requested and the grounds for the relief requested, and shall be filed in the Appellate Court, with proof of personal or e-mail service as provided in Rule 11, within two days of the entry or denial of the order from which review is being sought. An appropriate supporting record shall accompany the petition, which shall include the notice of interlocutory appeal, the temporary restraining order or the proposed temporary restraining order, the complaint, the motion requesting the granting of the temporary restraining order, and any supporting documents or matters of record necessary to the petition.

The supporting record must be authenticated by the certificate of the clerk of the trial court or by the affidavit of the attorney or party filing it.

(2) *Legal Memoranda.* The petitioner may file a memorandum supporting the petition which shall not exceed 15 pages or, alternatively, 4,500 words and which must also be filed within two days of the entry of the order that is being appealed under paragraph 1 of this section. The respondent shall file, with proof of personal or e-mail service as provided in Rule 11, any responding memorandum within two days following the filing of the petition, supporting record, and any memorandum which must be served upon the respondent personally or by e-mail. The respondent's memorandum may not exceed 15 pages or, alternatively, 4,500 words and must also be served upon the petitioner personally or by e-mail.

(3) *Replies; Extensions of Time.* Except by order of court, no replies will be allowed and no extension of time will be allowed.

(4) *Time for Decision; Oral Argument.* After the petitioner has filed the petition, supporting record, and any memorandum and the time for filing any responding memorandum has expired, the Appellate Court shall consider and decide the petition within five business days thereafter. Oral argument on the petition will not be heard.

(5) *Variations by Order of Court.* The Appellate Court may, if it deems it appropriate, order a different schedule, or order that no memoranda be filed, or order the other materials need not be filed.

Amended October 21, 1969, effective January 1, 1970; amended July 30, 1979, effective October 15, 1979; amended May 28, 1982, effective July 1, 1982; amended November 21, 1988, effective January 1, 1989; amended June 19, 1989, effective August 1, 1989; amended December 17, 1993, effective February 1, 1994; amended December 1, 1995, effective immediately; amended July 6, 2000, effective immediately; amended November 27, 2002, effective January 1, 2003; amendment of November 27, 2002, vacated December 31, 2002; amended March 20, 2009, effective immediately; amended February 26, 2010, effective immediately; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended Oct. 6, 2016, eff. Nov. 1, 2016; amended June 22, 2017, eff. July 1, 2017; amended Sept. 15, 2017, eff. Nov. 1, 2017.

Committee Comments
(Revised 1979)

This rule replaced former Rule 31, effective January 1, 1964, and in effect until January 1, 1967. That rule supplanted former section 78 of the Civil Practice Act, repealed effective January 1, 1964 (Laws of 1963, p. 2691, §1), section 7 of the 1964 judicial article (now section 6 of new article VI) having given the Supreme Court power to provide by rule for interlocutory appeals to the Appellate Court. The word "order" is substituted for "order or decree" throughout the rule, without change of meaning. (See Rule 2.)

Stays pending appeal are governed by Rule 305.

Paragraph (a)

Paragraph (a) provides for a designation−"Notice of Interlocutory Appeal"−on the notice of appeal, and continues the theory that the filing of the notice of appeal and not the filing of a bond perfects the appeal. The paragraph was amended in 1969 by adding items (5) through (7) to the list of appealable interlocutory orders. The amendment carries out the policy of covering all interlocutory appeals in the Supreme Court rules, as contemplated by section 7 of the 1964 judicial article (now section 6 of new article VI). The procedure provided in the Eminent Domain Act for appeal and stay in quick-take cases (Ill. Rev. Stat. 1967, ch. 47, par. 2.2(b)) is incorporated by reference in item (7), in lieu of detailed coverage of these matters in the rules, because of the peculiar problems in an appeal of this kind and its relationship to the condemnation proceeding as a whole.

Paragraph (a) was amended in 1979 to reflect changes in Rule 321 that eliminated the requirement that a praecipe for record be filed.

Paragraph (b)

Paragraph (b) is the same as former Rule 31(2) with slight verbal changes.

Paragraph (c)

Paragraph (c), establishing the briefing schedule as 7 days for appellant, 7 days for appellee, and 7 days for the reply brief, all dating from the filing of the record and the filing of the preceding brief (instead of from the due dates thereof), replaces the schedules in Rule 5 of the First District Appellate Court and Rule 23 of the other appellate districts (former Uniform Appellate Court Rule 23). The paragraph gives the court the right to order a different briefing schedule, or to dispense with briefs altogether. Until 1979, it was generally required that an abstract of the record or a reproduction of excerpts from the record be filed in the reviewing court in addition to the record and the briefs. Paragraph (d) provided that where the appellant elected to file excerpts from the record instead of an abstract the excerpts had to be filed within 7 days after the filing of the reply brief. The rules were amended in 1979 to provide that unless the Appellate Court orders that an abstract be prepared and filed, all cases will be heard on the original record and the briefs, the appellant's brief to include an appendix described in Rule 342. Appropriate changes were made in Rule 307(c) to reflect this change in the practice.

Rule 308. Certified Questions

(a) Requests. When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved. Such a statement may be made at the time of the entry of the order or thereafter on the court's own motion or on motion of any party. The Appellate Court may thereupon in its discretion allow an appeal from the order.

(b) How Sought. The appeal will be sought by filing an application for leave to appeal with the clerk of the Appellate Court within 30 days after the entry of the order in the trial court or the making of the prescribed statement by the trial court, whichever is later.

(c) Application; Answer. The application shall contain a statement of the facts necessary to an understanding of the question of law determined by the order of the trial court; a statement of the question itself; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The application shall be accompanied by an original supporting record (Rule 328), containing the order appealed from and other parts of the trial court record necessary for the determination of the application for permission to appeal. Within 21 days after the due date of the application, an adverse party may file an answer in opposition, together with an original of a supplementary supporting record containing any additional parts of the record the adverse party desires to have considered by the Appellate Court. The application and answer shall be submitted without oral argument unless otherwise ordered.

(d) After the applicant has filed the application and supporting record and the time for filing any answer has expired, the Appellate Court, except for good cause shown, shall decide whether to allow the interlocutory appeal within 30 days.

(e) Record; Briefs. If leave to appeal is allowed, any party may request that a complete record on appeal be filed , or the court may order the appellant to file the record within 35 days of the date on which such leave was allowed. The appellant shall file a brief in the reviewing court within the same 35 days. Otherwise the schedule and requirements for briefs shall be as provided in Rules 341 through 344.

(f) Stay. The application for permission to appeal or the granting thereof shall not stay proceedings in the trial court unless the trial court or the Appellate Court or a judge thereof shall so order.

Amended effective September 1, 1974; amended July 30, 1979, effective October 15, 1979; amended December 17, 1993, effective February 1, 1994; amended February 26, 2010, effective immediately; amended Dec. 11, 2014, eff. Jan. 1, 2015; amended Oct. 15, 2015, eff. Jan. 1, 2016; amended June 22, 2017, eff. July 1, 2017; amended Sept. 26, 2019, eff. Oct. 1, 2019.

Committee Comments (Revised 1979)

This rule was new in 1967. Prior to that time appeals from interlocutory orders had been permitted in Illinois only in a few specified classes of cases. (See former Rule 31 and its predecessor, former section 78 of the Civil Practice Act (Ill. Rev. Stat. 1961, ch. 110, par. 78).) This was also generally true in the Federal courts. In 1958, however, Congress adopted what is now 28 U.S.C. § 1292(b), which permits an interlocutory appeal from other than final orders when the trial court "shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that immediate appeal from the order may materially advance the ultimate termination of the litigation." The court of appeals may

then "in its discretion" permit the appeal to be taken. Thus, this type of interlocutory appeal is allowed when both the trial and appellate courts agree that an appeal will expedite the disposition of the litigation, and also that there is a substantial question of law to be decided. The appellate courts themselves can insure that this authority to allow interlocutory appeals is not abused. This power has been sparingly exercised in the Federal courts, but it has proved valuable.

This rule establishes a similar procedure for Illinois. One change from the Federal rule is to eliminate the requirement that the question raised be a "controlling" one. The meaning of "controlling" has not been clear, despite many cases on the point. and experience has shown that sometimes an important question of law that only arguably could be said to be controlling should be heard on appeal without awaiting final judgment.

The 1964 judicial article authorized the Supreme Court to provide by rule for appeals to the Appellate Court of other than final judgments of the circuit court. Arguably, however, it made no provision for rules permitting direct appeal to the Supreme Court except in the case of final judgments. Accordingly, Rule 308 was made applicable only to appeals to the Appellate Court, but it permits the Appellate Court to allow interlocutory appeals in classes of cases in which the *final* judgment is appealable only to the Supreme Court. Though the reference to "final judgments" in section 5 of the 1964 judicial article was not carried forward into article VI, section 4 of the new constitution, direct appeals to the Supreme Court remain limited to appeals from final judgments. See Rule 302.

Normally the interlocutory appeal will not stay proceedings in the trial court. The case may proceed in that court unless the trial court or the Appellate Court or a judge thereof otherwise orders. This will discourage an attempt to take an interlocutory appeal with a motive of delay.

In 1974, paragraph (b) was amended to substitute the word "application" appearing in the last sentence of the paragraph for the word "petition" to make the terminology uniform. At the same time paragraph (d) was amended to insert the clause "the appellant shall file his brief in the reviewing court within 35 days of the date on which such leave was allowed." This requirement formerly appeared in Rule 343(a). See the committee comments to Rule 306, paragraph (g).

Until 1979, paragraph (d) provided that, if appeal were allowed, "[e]xcerpts from record or an abstract shall be prepared and filed as provided in Rule 342." In that year Rule 342 was amended to eliminate altogether the practice of duplicating and filing excerpts from the record and to provide that no abstract shall be filed unless by order of the reviewing court. Accordingly, paragraph (d) was amended to reflect this change. See the committee comments to Rule 342.

Rule 309. Dismissal of Appeals by the Trial Court

Before the record on appeal is filed in the reviewing court, the trial court may dismiss the appeal of any party (1) on motion of that party or (2) on stipulation of the parties. The order of dismissal entered by the trial court shall be forwarded by the clerk to the reviewing court within 5 days after the entry of such order.

Amended July 30, 1979, and September 20, 1979, effective October 15, 1979; amended January 5, 1981, effective February 1, 1981; amended June 22, 2017, eff. July 1, 2017.

Committee Comments
(Revised January 5, 1981)

This rule is based upon former Rule 36(1)(e). The provision permitting the trial court to dismiss on motion of the appealing party was new in 1969. The last sentence was added in 1979 in view of the change in the practice in that year calling for immediate docketing of the appeal in the reviewing court upon receipt of the copy of the notice of appeal transmitted by the clerk of the circuit court. (See the committee comments to paragraph (f) of Rule 303.) For the same reasons the first sentence was amended in 1981 to limit the power of the circuit court to dismiss to the period before the record on appeal is filed, rather than the period before the case is docketed, as provided in the original text.

Rule 310. Prehearing Conference in the Appellate Court

In an appeal pending in the Appellate Court, the court or a judge thereof, on its own motion or on the request of a party, may order a prehearing conference to consider the simplification of the issues and any other matters that may aid in the disposition of the appeal. Unless otherwise agreed by the parties, a judge who will not participate in the decision of the case shall preside at the conference. The judge may enter an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel. The order controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

Effective July 1, 1971; amended September 8, 1975, effective October 1, 1975; amended June 19, 1989, effective August 1, 1989.

Committee Comments
(July 1, 1971)

This rule is based upon Rule 33 of the Federal Rules of Appellate Procedure. The provision that a judge who will not participate in the decision of the case shall preside at the conference does not appear in the Federal rule.

Rule 310.1. Appellate Settlement Conference Program

(a) Program Purpose and Goals. The purpose of the Appellate Settlement Conference Program (Program) is to provide an alternative means for resolving certain civil appeals in the Illinois Appellate Court. The Program is intended to give parties to an appeal an opportunity and forum to discuss their case, simplify and/or limit the issues, negotiate settlement, and consider any matters that may aid in disposition of the appeal or resolution of the action or proceeding.

The Supreme Court may authorize appellate districts to undertake and conduct settlement

conference programs. Such programs shall be provided at no additional court costs to the parties beyond the appellate filing fees as established by the Supreme Court.

(b) Applicability. Only civil appeals are eligible for assignment to the Program. However, appeals from judgments or orders entered in the following types of proceedings or actions are ineligible for inclusion in the Program: juvenile court proceedings, adoption proceedings, paternity proceedings, actions where the custody of or allocation of parental responsibilities for a minor is the sole issue, actions where the mental capacity of a party is at issue, contempt, petitions for extraordinary relief such as *mandamus*, petitions for writs of *habeas corpus*, actions for judicial review of decisions of the Illinois Workers' Compensation Commission, and election contests. Also ineligible are appeals from a judgment or order imposing sanctions upon a litigant or attorney or incarcerating a party.

(c) Local Rules.

(1) Each appellate district conducting a settlement conference program shall adopt local rules for the conduct of such a program. Local rules are to be consistent with the provisions of this rule. Prior to the establishment of a settlement conference program, the presiding judge of the appellate district, or the chairman of the executive committee in the case of the First District, shall submit to the Supreme Court for its review and approval, through its Administrative Office, rules governing the operation of the district's program.

(2) At a minimum, the rules adopted by an appellate district conducting a settlement conference program shall address:

(i) Actions eligible for inclusion in the program consistent with paragraph (b) of this rule;

(ii) Appointment, qualifications and compensation of the mediators;

(iii) Selection of cases for referral to a mediator consistent with paragraphs (e) and (f) of this rule;

(iv) Scheduling of the mediation conferences;

(v) Conduct of the conference and role of the appellate mediator;

(vi) Absence of a party at the conference and sanctions;

(vii) Termination and report of mediation conference;

(viii) Finalization of agreement;

(ix) Confidentiality;

(x) Mechanism for reporting to the Supreme Court on the settlement conference program.

(d) Administration. The Program shall be administered in each appellate district by a mediation committee consisting of two or more judges appointed under that district's rules governing operation of the Program. The mediation committee may be assisted in its duties by a settlement administrator, who may be the clerk of court. The clerk may also be a member of the mediation committee.

(e) Case Selection. Cases may be selected for the Program as follows:

(1) *Settlement Status Report.* Any party may file with the clerk of the court in the district in which the case was filed a "Settlement Status Report." Each appellate district may decide whether the filing of a "Settlement Status Report" shall be mandatory or voluntary. Notice of the filing of a "Settlement Status Report," along with a copy of same, shall be served upon all parties in accordance with the provisions of Supreme Court Rule 11.

(2) *Motions for Assignment to the Settlement Conference Program*. On his or her own motion or on motion of any party, the presiding judge of the appellate district to which a case is assigned, or the presiding judge of the division to which a case is assigned in the case of the First District, may with the approval of the judge to whom the case has been assigned for dispositional purposes, if any, recommend to the mediation committee that a civil appeal be assigned to the Program. Upon receipt of the "Settlement Status Report" or recommendation from a presiding judge, the mediation committee shall evaluate the case to determine if the case is eligible for assignment to the Program. If no objection is filed, and the case is otherwise eligible, an order shall be entered which assigns the case to the Program, transfers it to a settlement docket, and stays the filing of the record and/or briefs pending further order of court.

(f) Objection to Assignment. Any party to an appeal may object to the case being assigned to the Program. Such objections shall be in accordance with the local rules of the appellate district in which the case was filed. Upon receipt of any such objection, the settlement administrator shall send a written notice to all parties and the appellate mediator, informing them that an objection has been received and that the case will be removed from the Program.

(g) Dismissal; Agreement to Narrow Issues.

(1) If the settlement conference results in the settlement of the case and the parties agree to dismiss the appeal, an order dismissing the appeal shall be entered in the manner specified by the rules for that particular district.

(2) If the settlement conference does not result in settlement but the parties agree to narrow the issues on appeal, an order shall be prepared reciting the agreed terms. The order entered shall be binding upon the parties unless modified by subsequent order of the court. An order shall be entered removing the case from the Program, reassigning the case, and reestablishing the filing of the record and/or briefing schedule.

(h) Confidentiality. The settlement conference and all documents prepared by the parties, the appellate mediator, and the settlement administrator shall be confidential. No transcript or recording shall be made of any settlement conference and no mention of the settlement discussions shall be made in any brief filed with this court or in oral argument. Except for orders entered by the appellate court of the district in which the appeal was filed and written stipulations and agreements entered into by the parties, documents prepared by the parties and received by the appellate mediator or the settlement administrator as part of the Program shall not be filed of record with the clerk of the appellate court of that district and, upon dismissal of the case or its removal from the Program, whichever is first to occur, shall be destroyed by the settlement administrator.

(i) Sanctions. Failure of the parties or their authorized representatives to participate in a

settlement conference in good faith, failure to attend a regularly scheduled settlement conference, or failure to comply with the rules applicable to settlement conferences adopted by the district in which the case was filed may subject a party to the imposition of sanctions under Supreme Court Rule 375.

(j) Statistical Reporting. The settlement administrator shall maintain statistics as to the number and type of cases which are (1) considered by the mediation committee for inclusion in the Program, (2) assigned to the Program, (3) removed from the program on the objection of a party, (4) removed from the Program without any settlement having been reached, (5) dismissed by agreement of the parties while assigned to the Program, and (6) removed from the Program after the entry of an order narrowing the issues on appeal. The settlement administrator shall report such statistics to the mediation committee in accordance with the local rules in his or her appellate district and annually to the Director of the Administrative Office of the Illinois Courts.

Adopted October 29, 2004, effective January 1, 2005; amended Mar. 8, 2016, eff. immediately.

Committee Comments
(March 8, 2016)

Special Supreme Court Committee on Child Custody Issues

The Illinois Marriage and Dissolution of Marriage Act, Pub. Act 99-90 (eff. Jan. 1, 2016) (amending 750 ILCS 5/101 *et seq.*), has changed the terms "Custody," "Visitation" (as to parents) and "Removal" to "Allocation of Parental Responsibilities," "Parenting Time" and "Relocation." These rules are being amended to reflect those changes. The rules utilize both "custody" and "allocation of parental responsibilities" in recognition that some legislative enactments covered by the rules utilize the term "custody" while the Illinois Marriage and Dissolution of Marriage Act and the Illinois Parentage Act of 2015 utilize the term "allocation of parental responsibilities." The Special Committee has attempted to adhere to the usage found in the applicable legislative enactments.

Rule 311. Accelerated Docket

(a) Mandatory Accelerated Disposition of Child Custody or Allocation of Parental Responsibilities or Relocation of Unemancipated Minors Appeals. The expedited procedures in this subpart shall apply to appeals from final orders in child custody or allocation of parental responsibilities cases or decisions allowing or denying relocation (formerly known as removal) of unemancipated minors and to interlocutory appeals in child custody or allocation of parental responsibilities cases or decisions allowing or denying relocation (formerly known as removal) of unemancipated minors from which leave to appeal has been granted pursuant to Rule 306(a)(5). If the appeal is taken from a judgment or order affecting other matters, such as support, property issues or decisions affecting the rights of persons other than the child, the reviewing court may handle all pending issues using the expedited procedures in this rule, unless doing so will delay

decision on the child custody or allocation of parental responsibilities or the relocation of the unemancipated minors appeal.

(1) *Special Caption*. The notice of appeal or petition for leave to appeal, docketing statement, briefs and all other notices, motions and pleadings filed by any party in relation to an appeal involving child custody or allocation of parental responsibilities or decisions allowing or denying relocation of unemancipated minors shall include the following statement in bold type on the top of the front page:

THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).

(2) *Service Upon the Circuit Court*. In addition to the service required by Rule 303(c), a party filing notice of appeal in a child custody or allocation of parental responsibilities case shall, within seven days, serve the notice of appeal on the trial judge who entered the judgment or order appealed and the office of the chief judge of the circuit in which the judgment or order on appeal was entered. Where leave to appeal has been granted pursuant to Rule 306(a)(5), the appellant shall, within seven days, serve the order granting leave to appeal upon the trial judge who entered the judgment or order appealed from and the office of the chief judge of the circuit in which the judgment or order on appeal was entered.

(3) *Status Hearing in Circuit Court*. On receipt of the notice of appeal or order granting leave to appeal under Rule 306(a)(5) in a child custody or allocation of parental responsibilities case, the trial judge shall set a status hearing within 30 days of the date of filing of the notice of appeal or order granting leave to appeal to determine the status of the case, including payments of required fees to the clerk of the circuit court and court reporting personnel as defined in Rule 46 for the preparation of the transcript of proceedings, and take any action necessary to expedite preparation of the record on appeal and the transcript of the proceedings. The trial court shall have continuing jurisdiction for the purpose of enforcing the rules for preparation of the record and transcript. The trial court may request the assistance of the chief judge to resolve filing delays, and the chief judge shall assign or reassign the court reporting personnel's work as necessary to ensure compliance with the filing deadlines.

(4) *Record*. The record on appeal and the transcript of proceedings in a child custody or allocation of parental responsibilities case shall be filed in the Appellate Court no later than 35 days after the filing of the notice of appeal or granting of leave to appeal pursuant to Rule 306(a)(5). Any request for extension of the time for filing shall be accompanied by an affidavit of the court clerk or court reporting personnel stating the reason for the delay, and shall be served on the trial judge and the chief judge of the circuit. Lack of advance payment shall not be a reason for noncompliance with filing deadlines for the record or transcript. Any subsequent request for continuance shall be made to the appellate court on motion with notice to all parties in accordance with rules.

(5) *Deadline for Decision*. Except for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal or granting of leave to appeal pursuant to Rule 306(a)(5).

(6) *Local Rules*. The appellate court of each district shall by administrative order or rule adopt mandatory procedures to ensure completion of child custody or allocation of parental responsibilities appeals within the time specified in paragraph (5). The order or rule may include provisions regarding the use of memoranda in lieu of briefs, provisions for the separation of child custody or allocation of parental responsibilities issues from other issues on appeal, and any other procedures necessary to a fair and timely disposition of the case. The clerk of the appellate court shall be responsible for seeing that the accelerated docket is maintained and for advising the court of any noncompliance with the rules of the court concerning timely filing.

(7) *Briefing Schedule*. The brief of the appellant or memorandum in lieu of a formal brief is due 21 days after filing of the record on appeal in the appellate court. The brief of the appellee or memorandum in lieu of a formal brief is due 21 days from the due date of the appellant's brief. Any reply brief or memorandum in lieu of a formal brief is due 7 days from the due date of the appellee's brief. In the case of a cross-appeal, the cross-reply brief or memorandum in lieu of a formal brief is due 7 days from the due date of the reply brief.

(8) *Continuances Disfavored*. Requests for continuance are disfavored and shall be granted only for compelling circumstances. The appellate court may require personal appearance by the attorney or party requesting the continuance.

(9) *Effective Date*. This rule shall apply to all orders in which a notice of appeal is filed after its effective date.

(b) Discretionary Acceleration of Other Appeals. Any time after the docketing statement is filed in the reviewing court, the court, on its own motion, or on the motion of any party, for good cause shown, may place the case on an accelerated docket. The motion shall be supported by an affidavit stating reasons why the appeal should be expedited. If warranted by the circumstances, the court may enter an order accepting a supporting record prepared pursuant to Rule 328, consisting of those lower court pleadings, reports of proceedings or other materials that will fully present the issues. In its discretion the court may accept memoranda in lieu of formal briefs. The court may then enter an order setting forth an expedited schedule for the disposition of the appeal.

(1) *Special Caption.* The notice of appeal or petition for leave to appeal, docketing statement, and all other notices, motions, and pleadings filed by any party in relation to an appeal where the reviewing court, for good cause shown, has placed the case on an accelerated docket shall include the following statement in bold type on the top of the front page:

THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION SPECIFICALLY ORDERED UNDER RULE 311(b) BY THE REVIEWING COURT.

Adopted June 15, 1982, effective July 1, 1982; amended June 19, 1989, effective August 1, 1989; amended December 17, 1993, effective February 1, 1994; amended February 26, 2010, effective immediately; amended Mar. 8, 2016, eff. immediately; amended June 22, 2017, eff. July 1, 2017; amended June 28, 2017, eff. July 1, 2017; amended Apr. 3, 2018, eff. July 1, 2018.

Committee Comments
(March 8, 2016)

Special Supreme Court Committee on Child Custody Issues

The Illinois Marriage and Dissolution of Marriage Act, Pub. Act 99-90 (eff. Jan. 1, 2016) (amending 750 ILCS 5/101 et seq.), has changed the terms “Custody,” “Visitation” (as to parents) and “Removal” to “Allocation of Parental Responsibilities,” “Parenting Time” and “Relocation.” These rules are being amended to reflect those changes. The rules utilize both “custody” and “allocation of parental responsibilities" in recognition that some legislative enactments covered by the rules utilize the term “custody” while the Illinois Marriage and Dissolution of Marriage Act and the Illinois Parentage Act of 2015 utilize the term “allocation of parental responsibilities.” The Special Committee has attempted to adhere to the usage found in the applicable legislative enactments.

Committee Comments
(August 1, 1989)

Amended in 1989 to give the Appellate Court discretion, for good cause shown, to order cases to an accelerated docket on its own motion or on the motion of a party, rather than requiring that all parties agree to such action.

Committee Comments
(February 26, 2010)

Paragraph (a)

Paragraph (a) was originally enacted as Rule 306A in 2004 to expedite the resolution of appeals affecting the care and custody of children. In 2010, Rule 306A was moved to paragraph (a) of this rule. The purpose of this amendment was to streamline the wording of the rule and facilitate its use. The amendment was also intended to clarify that the rule addresses only the procedures to be followed in order to expedite disposition of child custody appeals. Importantly, this rule does not confer any new appeal rights or affect finality for purposes of appellate jurisdiction. The appealability of any order affecting child custody is governed principally by Rules 301, 304, 303, and 306. The expedited procedures set forth in paragraph (a) apply to all child custody appeals, whether they have been taken from final orders appealable as of right or interlocutory orders from which the court has granted leave to appeal. The goal of paragraph (a) remains to promote stability for not only abused and neglected children, but also children whose custody is an issue in dissolution of marriage, adoption, and other proceedings, by mandating swifter disposition of these appeals.

Paragraph (b)

Paragraph (b) encompasses the pre-2010 amendment version of Rule 311, which permits the expedited resolution of any appeal upon the request of any party and at the discretion of the appellate court.

Rule 312. Docketing Statement

(a) Appellant's Docketing Statement. All appellants, including cross-appellants and separate appellants, whether as a matter of right or as a matter of the court's discretion, shall file a docketing statement with the clerk of the reviewing court.

(1) In the case of an appeal as of right, the appellant shall file the statement within 14 days after filing the notice of appeal or petition for review of an administrative order or the date upon which a motion to file late notice of appeal is allowed.

(2) In the case of a discretionary appeal pursuant to Rule 306 or Rule 308, the statement shall be due at the time that the appellant files his or her Rule 306 petition or Rule 308 application.

(3) In cases of appeal pursuant to Rule 307(a), the docketing statement shall be filed within 7 days from the filing of the notice of appeal.

(b) Filing Fee and Attachments. The docketing statement shall be accompanied by the required reviewing court filing fee if it has not been previously paid. The docketing statement shall be accompanied by any written requests to the circuit clerk or court reporting personnel as defined in Rule 46 for preparation of their respective portions of the record on appeal and be served on all parties to the case with proof of service attached. Within 7 days thereafter, appellee, if it is deemed necessary, may file a short responsive statement with the clerk of the reviewing court with proof of service on all parties.

The docketing statement shall be prepared by utilizing or substantially adopting the appearance and content of the form provided in the Article III Forms Appendix.

Adopted December 17, 1993, effective February 1, 1994; amended December 13, 2005, effective immediately; corrected February 10, 2006, effective immediately; amended Dec. 12, 2012, eff. Jan. 1, 2013; amended Jan. 17, 2013, eff. immediately; amended Mar. 8, 2016, eff. immediately; amended June 22, 2017, eff. July 1, 2017.

Committee Comments

(March 8, 2016)

Special Supreme Court Committee on Child Custody Issues

The Illinois Marriage and Dissolution of Marriage Act, Pub. Act 99-90 (eff. Jan. 1, 2016) (amending 750 ILCS 5/101 *et seq.*), has changed the terms "Custody," "Visitation" (as to parents) and "Removal" to "Allocation of Parental Responsibilities," "Parenting Time" and "Relocation." These rules are being amended to reflect those changes. The rules utilize both "custody" and "allocation of parental responsibilities" in recognition that some legislative

enactments covered by the rules utilize the term "custody" while the Illinois Marriage and Dissolution of Marriage Act and the Illinois Parentage Act of 2015 utilize the term "allocation of parental responsibilities." The Special Committee has attempted to adhere to the usage found in the applicable legislative enactments.

Rule 313. Fees in the Reviewing Court

(a) Docket Fees. Unless excused by law, in all cases docketed in the reviewing court all appellants or petitioners shall pay a filing fee of $50.00, and all other parties upon entry of appearance or filing any document shall pay a fee of $30.00. Any non-party in a case filing any paper, including a motion for leave to file a brief *amicus curiae* pursuant to Rule 345, shall pay a fee of $30.

(b) Paper Document Request Fees. The clerks of the reviewing courts shall charge a fee of 25 cents per page for providing a paper copy of documents filed in their respective offices, except that the clerks shall furnish opinions or orders to parties in interest or their attorneys of record without cost. In furtherance of the public interest, the clerk may furnish opinions or orders to other individuals or entities without cost. The fee shall apply to both physical paper output and electronic delivery of documents, except as provided in paragraph (c).

The clerks may allow a requestor to use personal equipment, such as a portable scanner or camera, to obtain scans or images of filed documents and shall charge no fee for such access. When considering such requests, the clerk shall determine whether the equipment is likely to cause damage to the documents and whether the equipment and/or request will interfere with the clerk's office operations. Automatic feed features or stack feeders are not permitted.

(c) Fee for Electronic Remote Access to Documents. Unless a remote access user group is excluded from payment in the *Remote Access Policy*, the clerks of the reviewing courts shall charge 10 cents per page with a maximum fee of $3 per document for electronic remote access to a case document through re:SearchIL.

(d) Certificate and Seal. The fee for each official certificate and seal is $5.

(e) Law License. In the Supreme Court, the fee for preparing a law license, certifying it with the seal, administering the oath, and transcribing the name on the roll of attorneys is $50. The fee for a replacement law license shall be $25.

(f) Attorney Certificates of Good Standing. In the Supreme Court, the fee for an attorney certificate of good standing shall be $15. If multiple certificates for the same attorney are requested, each additional certificate shall be $5.

(g) Application for Waiver of Fees in the Reviewing Court. An applicant for a waiver of fees in the reviewing court shall use the "Application for Waiver of Court Fees (Appellate Court)" or the "Application for Waiver of Court Fees (Supreme Court)" adopted by the Illinois Supreme Court Access to Justice Commission, which can be found in Article III Forms Appendix. In all other respects, the provisions of Rule 298 shall apply in the reviewing court.

Adopted December 17, 1993, effective February 1, 1994; amended Jan. 23, 2014, eff. Jan. 1, 2015;

amended Dec. 7, 2015, eff. July 1, 2016; amended June 22, 2017, eff. July 1, 2017; amended June 26, 2018, eff. July 1, 2018; amended Dec. 19, 2019, eff. Jan. 1, 2020.

Commentary
(December 17, 1993)

Because the authority for collecting reviewing court fees is contained in statutory provisions (see 30 ILCS 220/12 (West 1992); 705 ILCS 25/3 (West 1992)), a fee rule is provided for informational purposes.

Rule 314. Reserved

Part B. Appeals from the Appellate Court to the Supreme Court

Rule 315. Leave to Appeal From the Appellate Court to the Supreme Court

(a) Petition for Leave to Appeal; Grounds. Except as provided below for appeals from the Illinois Workers' Compensation Commission division of the Appellate Court, a petition for leave to appeal to the Supreme Court from the Appellate Court may be filed by any party, including the State, in any case not appealable from the Appellate Court as a matter of right. Whether such a petition will be granted is a matter of sound judicial discretion. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered: the general importance of the question presented; the existence of a conflict between the decision sought to be reviewed and a decision of the Supreme Court, or of another division of the Appellate Court; the need for the exercise of the Supreme Court's supervisory authority; and the final or interlocutory character of the judgment sought to be reviewed.

No petition for leave to appeal from a judgment of the five-judge panel of the Appellate Court designated to hear and decide cases involving review of Illinois Workers' Compensation Commission orders shall be filed, unless two or more judges of that panel join in a statement that the case in question involves a substantial question which warrants consideration by the Supreme Court. A motion asking that such a statement be filed may be filed as a prayer for alternative relief in a petition for rehearing, but must, in any event, be filed within the time allowed for filing a petition for rehearing.

(b) Time.

(1) Published Decisions. Unless a timely petition for rehearing is filed in the Appellate Court, a party seeking leave to appeal must file the petition for leave in the Supreme Court within 35 days after the entry of such judgment. If a timely petition for rehearing is filed, the party seeking review must file the petition for leave to appeal within 35 days after the entry of the order denying the petition for rehearing or, if a modified decision is issued upon denial of rehearing, from the entry of the modified decision. If a petition is granted, the petition for leave

to appeal must be filed within 35 days of the entry of the judgment on rehearing. The Supreme Court, or a judge thereof, on motion, may extend the time for petitioning for leave to appeal, but such motions are not favored and will be allowed only in the most extreme and compelling circumstances. The filing of a corrected opinion by the Appellate Court where no petition for rehearing was filed does not extend the time for a party to file a petition for leave to appeal.

(2) Rule 23 Orders. The time for filing a petition for leave to appeal a Rule 23 order shall be the same as for published opinions unless a timely motion to publish has been filed in the Appellate Court pursuant to Rule 23(f). If the Appellate Court grants the motion to publish, the party seeking review must file the petition for leave to appeal within 35 days after the filing of the opinion. If the Appellate Court denies the motion to publish, the party seeking review must file the petition for leave to appeal within 35 days after entry of the order denying the motion to publish. The filing of a Rule 23(f) publication motion shall not invalidate a previously filed petition for leave to appeal. The clerk of the Appellate Court shall promptly transmit notice of the filing of a Rule 23(f) publication motion and its disposition to the clerk of the Supreme Court in any case in which a petition for leave to appeal is filed, irrespective of whether the motion to publish precedes or follows the filing of a petition for leave to appeal.

(c) Contents. The petition for leave to appeal shall contain, in the following order:

(1) a prayer for leave to appeal;

(2) a statement of the date upon which the judgment was entered; whether a petition for rehearing was filed and, if so, the date of the denial of the petition or the date of the judgment on rehearing;

(3) a statement of the points relied upon in asking the Supreme Court to review the judgment of the Appellate Court;

(4) a fair and accurate statement of the facts, which shall contain the facts necessary to an understanding of the case, without argument or comment, with appropriate references to the pages of the record on appeal, in the format as set forth in the Standards and Requirements for Electronic Filing the Record on Appeal.

(5) a short argument (including appropriate authorities) stating why review by the Supreme Court is warranted and why the decision of the Appellate Court should be reversed or modified; and

(6) an appendix which shall include the opinion or order of the Appellate Court and any documents from the record which are deemed necessary to the consideration of the petition.

(d) Format; Service; Filing. The petition shall otherwise be prepared, served, and filed in accordance with the requirements for briefs as set forth in Rules 341 through 343, except that it shall be limited to 20 pages or, alternatively, 6,000 words, excluding any items identified as excluded from the length limitation in Rule 341(b)(1).

(e) Records. The clerk of the Supreme Court shall transmit notice of the filing of the petition to the clerk of the Appellate Court, who, upon request of the clerk of the Supreme Court made either before or after the petition is acted upon, shall transmit to the clerk of the Supreme Court the record on appeal that was filed in the Appellate Court and the certified Appellate Court record.

(f) Answer. The respondent need not but may file an answer, with proof of service, within 21 days after the expiration of the time for the filing of the petition, or within such further time as the Supreme Court or a judge thereof may grant. An answer shall set forth reasons why the petition should not be granted, and shall conform, to the extent appropriate, to the form specified in this rule for the petition, omitting the items (1), (2), (3), (4) and (6) set forth in paragraph (c) except to the extent that correction of the petition is considered necessary. The answer shall be prepared, served, and filed in accordance with the requirements for briefs except that it shall be limited to 20 pages or, alternatively, 6,000 words, excluding any items identified as excluded from the length limitation in Rule 341(b)(1). No reply to the answer shall be filed. If the respondent does not file an answer or otherwise appear but wants notice of the disposition of the petition for leave to appeal, a request for such notice should be submitted to the clerk in Springfield.

(g) Transmittal of Trial Court Record if Petition Is Granted. If the petition is granted, upon notice from the clerk of the Supreme Court the clerk of the Appellate Court shall transmit to the Supreme Court the record on appeal that was filed in the Appellate Court and the Appellate Court record, unless already filed in the Supreme Court.

(h) Briefs Other Than in Child Custody and Delinquent Minor Cases. If leave to appeal is allowed, the appellant may allow his or her petition for leave to appeal to stand as the brief of appellant, or may file a brief. Within 14 days after the date on which leave to appeal was allowed, appellant shall serve on all counsel of record a notice of election to allow the petition for leave to appeal to stand as the brief of appellant, or to file an additional brief, and within the same time shall file the notice with the clerk of the Supreme Court. If appellant elects to allow the petition for leave to appeal to stand as his or her brief, appellant shall file with the notice a complete table of contents, with page references, of the record on appeal and a statement of the applicable standard of review for each issue, with citation to authority, in accordance with Rule 341(h)(3). If appellant elects to file an additional brief, it shall be filed within 35 days from the date on which leave to appeal was allowed. Motions to extend the time for filing an additional brief are not favored and will be allowed only in the most extreme and compelling circumstances.

The appellee may allow his or her answer to the petition for leave to appeal to stand as the brief of appellee, or may file a brief. If the appellant has elected to allow the petition for leave to appeal to stand as the brief of appellant, within 14 days after the due date of appellant's notice the appellee shall serve on all counsel of record a notice of election to let the answer stand as the brief of appellee, or to file a brief, and within the same time shall file the notice with the clerk of the Supreme Court. If the appellee elects to file a brief, such brief shall be filed within 35 days of the due date of appellant's notice of election to let the petition for leave to appeal stand as the brief of appellant.

If the appellant has elected to file an additional brief, within 14 days after the due date of appellant's brief the appellee shall serve on all counsel of record a notice of election to let his or her answer stand as the brief of appellee, or to file an additional brief, and within the same time shall file a copy of the notice with the clerk of the Supreme Court. If appellee elects to file an additional brief it shall be filed within 35 days of the due date of appellant's brief.

If an appellee files a brief and that brief does not contain arguments in support of cross-relief,

the appellant may file a reply brief within 14 days of the due date of appellee's brief. If the brief of appellee contains arguments in support of cross-relief, the appellant may file a combined reply brief and response to the appellee's request for cross-relief within 35 days of the due date of appellee's brief, and the appellee may file a reply brief confined strictly to the appellant's arguments in opposition to the appellee's request for cross-relief within 14 days of the due date of appellant's combined brief. If the brief of the appellee contains arguments in support of cross-relief, the cover of the appellee's brief shall be captioned: "Brief of Appellee. Cross-Relief Requested," the cover of the appellant's combined reply brief and response to the appellee's request for cross-relief shall be captioned "Appellant's Reply Brief and Response to Request for Cross-Relief," and the cover of the appellee's reply in support of its request for cross-relief shall be captioned "Appellee's Reply in Support of Request for Cross-Relief."

Briefs, pleadings and other documents filed with the Supreme Court in cases covered by this rule shall, to the extent appropriate, conform to Rules 341 through 343. If the brief of appellee contains arguments in support of cross-relief, then the length limitations for cross-appeals in Rule 341(b)(1) shall apply to the briefing in the case.

In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(i) Child custody cases.

(1) Special caption. A petition for leave to appeal in a child custody or allocation of parental responsibilities or relocation of emancipated minors case, as defined in Rule 311, and any notice, motion, or pleading related thereto, shall include the following statement in bold type on the top of the front page: **THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).**

(2) Briefs. The requirements of paragraph (h) above shall apply in all respects, except:

(a) the appellant's notice of election shall be due within 7 days after the date on which the leave to appeal was allowed;

(b) if the appellant elects to file an additional brief, it shall be filed within 21 days from the date on which leave to appeal was allowed;

(c) if the appellant has elected to allow the petition for leave to appeal to stand as the brief of the appellant, the appellee's notice of election is due within 7 days of the due date of appellant's notice of election, or if the appellant has elected to file an additional brief, the appellee's notice of election is due within 7 days after the due date of appellant's brief;

(d) if the appellee elects to file an additional brief, it shall be filed within 21 days of the due date of appellant's notice of election to let the petition for leave to appeal stand as the brief of the appellant, or if the appellant elected to file an additional brief, the appellee's additional brief shall be filed within 21 days of the due date of appellant's brief;

(e) if the appellee has elected to file an additional brief, the appellant's reply brief shall be due within 7 days of the due date of the appellee's brief; and

(f) if cross-relief was requested, appellee's reply brief shall be due within 7 days of the due date of the appellant's reply brief.

(3) Extensions of Time Disfavored. Requests for extensions of time are disfavored and shall be granted only for compelling circumstances.

(j) Delinquent minor cases.

(1) Special Caption. A petition for leave to appeal in a delinquent minor case, as provided for in Rule 660A, and any notice, motion, or pleadings related thereto, shall include the following statement in bold type on the top of the front page: **THIS APPEAL INVOLVES A DELINQUENT MINOR PROCEEDING UNDER THE JUVENILE COURT ACT.**

(2) Briefs. The requirements of paragraph (h) above shall apply in all respects, except:

(a) the appellant's notice of election shall be due within 7 days after the date on which the leave to appeal was allowed;

(b) if the appellant elects to file an additional brief, it shall be filed within 28 days from the date on which leave to appeal was allowed;

(c) if the appellant has elected to allow the petition for leave to appeal to stand as the brief of the appellant, the appellee's notice of election is due within 7 days of the due date of the appellant's notice of election, or if the appellant has elected to file an additional brief, the appellee's notice of election is due within 7 days after the due date of the appellant's brief;

(d) if the appellee elects to file an additional brief, it shall be filed within 28 days of the due date of the appellant's notice of election to let the petition for leave to appeal stand as brief of appellant, or if the appellant elected to file an additional brief, the appellee's additional brief shall be filed within 28 days of the due date of the appellant's brief;

(e) if the appellee has elected to file an additional brief, the appellant's reply brief shall be due within 7 days of the due date of the appellee's brief; and

(f) if cross-relief was requested, the appellee's reply brief shall be due within 7 days of the due date of the appellant's reply brief.

(3) Extensions of Time Disfavored. Requests for extensions of time are disfavored and shall be granted only for compelling circumstances.

(k) Oral Argument. Oral argument may be requested as provided in Rule 352(a).

Amended effective November 30, 1972; amended effective September 1, 1974; amended October 1, 1976, effective November 15, 1976; amended September 29, 1978, effective November 1, 1978; amended July 30, 1979, effective October 15, 1979; amended February 19, 1982, effective April 1, 1982; amended May 28, 1982, effective July 1, 1982; amended February 1, 1984, effective February 1, 1984, with Justice Moran dissenting (see *Yellow Cab Co. v. Jones* (1985), 108 Ill. 2d 330, 342); amended April 27, 1984, effective July 1, 1984; amended February 21, 1986, effective August 1, 1986; amended February 27, 1987, effective April 1, 1987; amended April 7, 1993, effective June 1, 1993; amended December 17, 1993, effective February 1, 1994; amended September 23, 1996, effective immediately; amended September 22, 1997, effective October 1, 1997; amended March 19, 2003,

effective May 1, 2003; amended December 5, 2003, effective immediately; amended October 15, 2004, effective January 1, 2005; amended February 10, 2006, effective July 1, 2006; amended May 24, 2006, effective September 1, 2006; amended August 15, 2006, effective immediately; amended October 2, 2006, effective immediately; amended September 25, 2007, effective October 15, 2007; amended February 26, 2010, effective immediately; amended Mar. 15, 2013, eff. May 1, 2013; amended May 23, 2013, eff. July 1, 2013; amended Dec. 11, 2014, eff. Jan. 1, 2015; amended Mar. 15, 2016, eff. immediately; amended June 22, 2017, eff. July 1, 2017; amended June 28, 2017, eff. July 1, 2017; amended Sept. 15, 2017, eff. Nov. 1, 2017; amended Mar. 21, 2018, eff. Apr. 1, 2018; amended Apr. 3, 2018, eff. July 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019; amended Sept. 30, 2020, eff. Oct. 1, 2020; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Committee Comments
(February 10, 2006)

Paragraph (b) is amended to dispense with the requirement of filing an affidavit of intent to file a petition for leave to appeal or a certificate of intent to file a petition for leave to appeal. This amendment is consistent with the public policy of this state as evinced by the Code of Civil Procedure, which favors resolution on the merits: "This Act shall be liberally construed, to the end that controversies may be speedily and finally determined according to the substantive rights of the parties." 735 ILCS 5/1-106.

The amendment also addresses the concerns addressed in *A.J. Maggio Co. v. Willis*, 197 Ill. 2d 397 (2001), *Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490 (2002), and *Wauconda Fire Prevention District v. Stonewall Orchards, LLP*, 214 Ill. 2d 417 (2005), all of which dealt with the rather unclear requirements of Rule 315, which had been amended in 1993 to require the filing of an affidavit of intent within 21 days in order to have 35 days in which to file a petition for leave to appeal.

Paragraph (b) is further amended to separate the provision on the time for filing a petition for leave to appeal, which remains in paragraph (b), from the provision on the content of the petition, which becomes a new paragraph (c). The subsequent paragraphs are relettered accordingly.

Paragraph (b) is also amended to allow a party that may not have sought Supreme Court review of an adverse disposition under Rule 23(b) or (c) the opportunity to seek review of that disposition after the Appellate Court grants a motion to publish it.

Rule 316. Appeals from Appellate Court to Supreme Court on Certificate

Appeals from the Appellate Court shall lie to the Supreme Court upon the certification by the Appellate Court that a case decided by it involves a question of such importance that it should be decided by the Supreme Court. Application for a certificate of importance may be included in a petition for rehearing or may be made by filing a petition, clearly setting forth the grounds relied upon, with the clerk of the Appellate Court within 35 days after the entry of the judgment appealed from if no petition for rehearing is filed or, if a petition for rehearing is filed, within 14 days after the denial of the petition or the entry of the judgment on rehearing. An application for a certificate of importance does not extend the time for filing a petition for leave to appeal to the Supreme

Court. The length of the application and answer, if any, shall be governed by Supreme Court Rule 367. No answer to an application for a certificate of importance will be received unless requested by the Appellate Court.

When the Appellate Court has granted a certificate of importance, the clerk of that court shall transmit to the clerk of the Supreme Court the record on appeal that was filed in the Appellate Court, with the certified Appellate Court record and opinions appended thereto, and the certificate of importance of the Appellate Court. The Appellate Court may require bond as a condition of granting a certificate of importance. The record shall be transmitted to the office of the clerk of the Supreme Court not later than 14 days from the date the certificate of importance is granted. Briefs shall be filed as provided in Rules 341 through 343. The appellant's brief shall contain the Appellate Court opinion.

Amended July 30, 1979, effective October 15, 1979; amended December 17, 1993, effective February 1, 1994; amended December 6, 2006, effective immediately; amended June 22, 2017, eff. July 1, 2017; amended Sept. 30, 2020, eff. Oct. 1, 2020.

Committee Comments
(Revised 1979)

This rule providing for appeal by certificate of importance from the Appellate Court is former Rule 32(2) without change in substance except that the time for filing is slightly changed. It is measured in multiples of 7 days and the periods run from the date the judgment is entered. The revision makes it clear that application for a certificate of importance may be included in a petition for rehearing or may be filed separately within the time specified. It is important to notice, however, that the application does not extend the time for petitioning the Supreme Court to grant leave to appeal as a matter of discretion. It may therefore be more convenient and prudent, if a petition for rehearing is to be filed, to join the application for certificate of importance with the petition for rehearing.

In 1979, Rule 342 was amended to provide that, with the exception of stated documents (see Rule 342(a)), no portions of the record shall be reproduced, and that, absent an order of the reviewing court, no abstract shall be prepared and filed. The last sentence of Rule 316 was amended to reflect this change in the practice. See the committee comments to Rule 342.

Commentary
(December 17, 1993)

It is well established that typewritten documents are accepted for filing in the reviewing courts and that professionally printed documents are not necessary.

The rule is amended to be consistent with the time frame of Rule 315(b).

Rule 317. Appeals from the Appellate Court to the Supreme Court as of Right

Appeals from the Appellate Court shall lie to the Supreme Court as a matter of right in cases

in which a statute of the United States or of this state has been held invalid or in which a question under the Constitution of the United States or of this state arises for the first time in and as a result of the action of the Appellate Court. The appeal shall be initiated by filing a petition in the form prescribed by Rule 315, except that the petition shall be entitled "Petition for Appeal as a Matter of Right." Item (1) of the petition shall state that the appeal is taken as a matter of right and item (5) shall contain argument as to why appeal to the Supreme Court lies as a matter of right. In other respects the procedure is governed by Rule 315. If leave to appeal is to be sought in the alternative, the request therefor must be included in the same petition, and item (1) thereof shall include an alternative prayer for leave to appeal, and item (5) the argument as to why in the alternative leave to appeal should be allowed as a matter of sound judicial discretion. When both appeal as a matter of right and leave to appeal are sought, both requests will be disposed of by a single order. If the court allows the petition, briefs shall be filed as provided in the case of appeal by leave under Rule 315.

Amended June 26, 1970, effective July 1, 1970; amended July 30, 1979, effective October 15, 1979; amended February 10, 2006, effective July 1, 2006; amended June 22, 2017, eff. July 1, 2017.

Committee Comments
(Revised 1979)

This rule provides, in the language of the Constitution (art. VI, §4 (c)), for appeals as of right from the Appellate Court in cases in which ``a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court." The procedure in such cases will be similar to that provided in Rule 315 for petitions for leave to appeal, except that the petition need only contain argument as to why appeal lies to the Supreme Court as a matter of right. Prior to the adoption of this rule effective January 1, 1967, such appeals were taken by notice of appeal. (See former Rule 32(3).) The experience of the Supreme Court was that this procedure was often invoked improperly, a fact which the court would not usually discover until full briefs on the merits were filed and the case was scheduled for oral argument. The time of counsel and of the court is saved by giving the court an opportunity to determine this preliminary question on the basis of a petition filed in advance.

The rule was amended in June 1970 (a) to make mandatory the provision that if leave to appeal is to be sought in the alternative to appeal as of right, the requests for both alternatives are to appear in the same petition, and (b) to provide expressly that if there are requests for both an appeal as of right and an appeal by leave, the court will dispose of both requests in a single order.

In 1979, Rule 342 was amended to provide that, with the exception of stated documents (see Rule 342(a)), no portions of the record shall be reproduced, and that, absent an order of the reviewing court, no abstract shall be prepared and filed. The last sentence of Rule 317 was amended to reflect this change in the practice. See the committee comments to Rule 342.

Rule 318. General Rules Governing All Appeals from the Appellate Court to the Supreme Court

(a) Relief to Other Parties. In all appeals, by whatever method, from the Appellate Court to the Supreme Court, any appellee, respondent, or coparty may seek and obtain any relief warranted by the record on appeal without having filed a separate petition for leave to appeal or notice of cross-appeal or separate appeal.

(b) Interlocutory Review. The review of cases at an interlocutory stage is not favored, and a failure to seek review when the Appellate Court's disposition of the case is not final does not constitute a waiver of the right to present any issue in the appropriate court thereafter.

(c) Appellate Court Briefs. If it is important for the Supreme Court to know the contentions of any party in the Appellate Court, e-filed, stamped copies of the pertinent Appellate Court briefs may be filed with the Supreme Court.

(d) Fees. In appeals taken from the Appellate Court, the clerk of that court is entitled to receive from the party appealing only the fees allowed by law or these Rules.

Amended December 17, 1993, effective February 1, 1994; amended June 22, 2017, eff. July 1, 2017; amended Sept. 30, 2020, eff. Oct. 1, 2020.

Committee Comments

This rule is taken without major change from former Rules 32(1), 32(4), 32(5) and 39(2). Paragraph (c) differs from the last mentioned rule in that it dispenses with the need for obtaining leave of the Supreme Court in order to have briefs in the Appellate Court certified to the Supreme Court. In addition it deletes the requirement of former Rule 39 that the Appellate Court briefs shall be filed only "if it is important to know the position taken by any party in the Appellate Court."

Rules 319-20. Reserved

Part C. Record on Appeal

Rule 321. Contents of the Record on Appeal

The record on appeal shall consist of the judgment appealed from, the notice of appeal, and the entire original common law record, unless the parties stipulate for, or the trial court, after notice and hearing, or the reviewing court, orders less. The common law record includes every document filed, judgment, and order entered and any exhibit offered and filed by any party. Upon motion the reviewing court may order that other exhibits be included in the record. The record on appeal shall also include any report of proceedings prepared in accordance with Rule 323. There is no distinction between the common law record and the report of proceedings for the purpose of determining what is properly before the reviewing court.

Amended July 30, 1979, effective October 15, 1979; amended December 17, 1993, effective February 1, 1994; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Committee Comments
(Revised 1979)

As originally adopted Rule 321 provided that the record on appeal consisted of "the judgment appealed from, the notice of appeal, and other parts of the trial court record designated in the praecipes." (36 Ill. 2d R. 321.) Rule 322 set forth the procedure for the filing of praecipes by the parties designating the parts of the record to be included. In 1979 Rule 321 was amended to provide that unless the parties stipulate for less or the trial or reviewing court orders less, the entire original common law trial record will be transmitted to the reviewing court. Reference to praecipes was deleted, and Rule 322 was abrogated.

While Rule 321, as amended, permits the trial or the reviewing court, or the parties by stipulation, to order that less than the "entire original common law trial court record" be transmitted to the reviewing court, it makes it plain that such portions of the entire trial record as are transmitted should be original papers, and this is underscored by the deletion in Rule 324 of the provision permitting the trial or reviewing court to order otherwise, and the deletion in Rule 331 of the phrase "unless the record contains no original papers."

Commentary
(December 17, 1993)

This rule is amended to describe the contents of the common law record, including any documentary exhibits in the trial court, and to provide that the reviewing court upon motion may order that other exhibits, including physical exhibits and evidence, be included in the record on appeal.

Rule 322. Reserved

Rule 323. Report of Proceedings

(a) Contents; Preparation. A report of proceedings may include evidence, oral rulings of the trial judge, a brief statement of the trial judge of the reasons for his decision, and any other proceedings that the party submitting it desires to have incorporated in the record on appeal. The report of proceedings shall include all the evidence pertinent to the issues on appeal.

Within the time for filing the docketing statement under Rule 312 the appellant shall make a written request to the court reporting personnel as defined in Rule 46 to prepare a transcript of the proceedings that appellant wishes included in the report of proceedings. Within 7 days after service on the appellee of the docketing statement and the request for transcript the appellee may serve on the appellant a designation of additional portions of the proceedings that the appellee deems necessary for inclusion in the report of proceedings. Within 7 days after service of such designation the appellant shall request the court reporting personnel to include the portions of the proceedings so designated or make a motion in the trial court for an order that such portions not be included unless the cost is advanced by the appellee.

The entire expense of incorporating unnecessary and immaterial matter in the report of proceedings may be assessed by the reviewing court as costs against the party who designated that matter, irrespective of how the appeal is decided.

(b) Certification and Filing. Court reporting personnel who transcribe a report of proceedings shall certify to its accuracy and shall notify all parties that the report of proceedings has been completed and filed with the clerk of the circuit court. The report of proceedings shall be taken as true and correct unless shown to be otherwise and corrected in the manner permitted by Rule 329 for the record on appeal.

The court reporting personnel shall electronically file the reports of proceedings in searchable PDF format to the circuit court clerk within 49 days after the filing of the notice of appeal. There shall be a separate, transcribed, dated, and numbered PDF file for each report of proceedings. Reports of proceedings shall be clearly labeled on the first page with the date of the hearing or court proceeding, the type of proceeding, trial court case number, case caption, and the name of the presiding judge.

(c) Procedure If No Verbatim Transcript Is Available (Bystander's Report). If no verbatim transcript of the evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including recollection. In any trial court, a party may request from the court official any recording of the proceedings. The court official or any person who prepared and kept, in accordance with these rules, any recording of the proceedings shall produce such recording to be provided at the party's expense. Such recording may be transcribed for use in preparation of a bystander's report. The proposed report shall be served on all parties within 28 days after the notice of appeal is filed. Within 14 days after service of the proposed report of proceedings, any other party may serve proposed amendments or an alternative proposed report of proceedings. Within 7 days thereafter, the appellant shall, upon notice, present the proposed report or reports and any proposed amendments to the trial court for settlement and approval. The court, holding hearings if necessary, shall promptly settle, certify, and order filed an accurate report of proceedings. Absent stipulation, only the report of proceedings so certified shall be included in the record on appeal.

(d) Agreed Statement of Facts. The parties by written stipulation may agree upon a statement of facts material to the controversy and file it without certification in lieu of and within the time for filing a report of proceedings.

(e) Extension of Time. The reviewing court or any judge thereof may extend the time for filing, in the trial court, the report of proceedings or agreed statement of facts or for serving a proposed report of proceedings, on notice and motion filed in the reviewing court before the expiration of the original or extended time, or on notice and motion filed within 35 days thereafter. Motions for extensions of time shall be supported by an affidavit showing the necessity for extension, and motions made after expiration of the original or extended time shall be further supported by a showing of reasonable excuse for failure to file the motion earlier. Any motion for extension of time shall be served on the clerk preparing the record on appeal.

Amended October 21, 1969, effective January 1, 1970; amended effective July 1, 1971; amended July 30, 1979, effective October 15, 1979; amended January 5, 1981, effective February 1, 1981; amended February 19, 1982, effective April 1, 1982; amended October 25, 1990, effective November 1, 1990; amended December 17, 1993, effective February 1, 1994; amended September 23, 1996, effective immediately; amended December 13, 2005, effective immediately; amended June 22, 2017, eff. July 1, 2017.

Committee Comments
(Revised February 1982)

This rule is based upon former Rules 36(1)(c) and (d), and 36-1(3)(c), as they existed before 1967, with certain provisions added to make the paragraph a complete statement as to the contents of the report of proceedings and the procedure for having it approved and filed.

Paragraph (a)

Paragraph (a), as originally adopted, was based upon former Rule 36(1)(c). The provision that the report of proceedings shall include "all the evidence pertinent to the issues on appeal" was new. The second paragraph was added in 1979 and is designed to assure early settlement of the contents of the report of proceedings. Formerly the failure of the appellant to order necessary parts of the proceedings transcribed and included would not be apparent until the report of proceedings was presented to the trial judge for certification, which, under paragraph (b), could take place late in the 49-day period allowed for the filing of the report of proceedings. The new provision, patterned in part on Rule 10(b) of the Federal Rules of Appellate Procedure, gives the appellee early notice of any omissions and avoids the alternatives of late motions for extension of time and over designation out of an abundance of caution, the first productive of unnecessary delay in the hearing of the appeal and the second unnecessary expense. See the committee comments to Rule 330.

Paragraph (b)

Paragraph (b) is also derived from former Rule 36(1)(c). The 49-day (instead of 50-day) time period follows the principle of multiples of seven. The words "in the trial court" were inserted in 1969 to state the existing practice. (See Rule 608(b).) In 1967, paragraph (b) was amended to provide for stipulations dispensing with the necessity of certification. The last sentence of this paragraph, added in 1969, is based upon Federal Rule of Appellate Procedure 11(a).

Paragraph (c)

Paragraph (c) is taken from former Rule 36-1(3)(c), which was included by the Illinois Supreme Court in Rule 36-1 as a part of the "expeditious and inexpensive" appeal procedure instituted May 18, 1964, in appeals from cases assignable to magistrates. The comments of the Illinois Supreme Court Rules Committee to Rule 36-1 (53 Ill. B.J. 18 (1964)) indicate the common-

law background of the procedure outlined in this paragraph. The changes in substance in the revised paragraph are the deletion of the requirement that the trial court settle and certify the report and order it filed within 14 days after presentation in favor of an admonition that it do so "promptly," and the insertion of the words "holding hearings if necessary" in the last sentence to make explicit what was implied in the former rule. In 1971, the time within which the appellant's proposed report of proceedings must be served was increased from 7 to 14 days and the last sentence of the paragraph was added to make it explicit that after a report of proceedings has been settled or agreed upon, only that report is to be included in the record on appeal.

Paragraph (d)

Paragraph (d) is a simplified version of former Rule 36-1(d). If the parties agree upon a statement of facts, it is filed in lieu of the report of proceedings and the time requirements for the report of proceedings apply. The words "without certification" were added in 1971.

Paragraph (e)

Paragraph (e) is derived from the final paragraph of former Rule 36(1)(c). The main point of the 1981 amendment is to place the sole authority for granting extensions of time under this rule in the reviewing court. The rule contains a "safety valve" which did not appear in the former rule, allowing the court to extend the time on motion filed within 35 days after the expiration of the time for filing the report of proceedings, supported by a showing of reasonable excuse. The former rule allowed no relief, however compelling the circumstances, once the time period had expired. The last sentence, as amended in 1981, also contains a requirement that any motion for extension of time be supported by a showing of necessity. This is in line with the general policy of deciding cases on appeal expeditiously; unnecessary delay is not favored. In 1971, paragraph (e) was amended to make it explicit that the reviewing court may extend the time for serving a proposed report of proceedings under paragraph (c) as well as for filing the report of proceedings. This amendment is consonant with other amendments made in 1979 placing in the reviewing court the general supervision of the progress of the appeal. See the committee comments to Rule 303(f).

Commentary
(December 17, 1993)

Paragraph (a) is amended to require that the appellant's written request for preparation of the report of proceedings be made within the applicable time for filing the docketing statement under new Rule 312. Previously the request was to be made within 14 days of the filing of the notice of appeal regardless of whether the appeal was direct or interlocutory in nature. The requirement that appellant serve notice of the request upon all parties is now contained in Rule 312. The provision for assessment of costs of incorporating unnecessary matters was taken from former Rule 330.

Paragraph (c), as amended, now contains the appellation "Bystander's Report," clarifies that the proposed report of proceedings shall be served on all parties, and reallocates the times for

preparing and serving the proposed report and any proposed amendments or alternative report, without lengthening the overall time for the procedure.

Rule 324. Preparation and Certification by the Circuit Clerk of the Record on Appeal

The clerk of the trial court or administrative agency shall prepare and certify the record on appeal. The record shall be arranged in three sections: the common-law record, the report of proceedings, and the trial exhibits, and the record shall comply with the Standards and Requirements for Electronic Filing the Record on Appeal. The certificate shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article III Forms Appendix. The clerk shall include in the record or a supplement to the record under Rule 329 any filing that carries a file stamp of the clerk of the circuit court without any need for further authentication. Notice of filing must be transmitted to all parties of record.

Amended October 21, 1969, effective January 1, 1970; amended July 30, 1979, effective October 15, 1979; amended July 1, 1985, effective August 1, 1985; amended April 10, 1987, effective August 1, 1987; amended December 17, 1993, effective February 1, 1994; amended May 30, 2008, effective immediately; amended Oct. 15, 2015, eff. Jan. 1, 2016; amended Oct. 6, 2016, eff. Nov. 1, 2016; amended June 22, 2017, eff. July 1, 2017.

Committee Comments
(Revised July 30, 1979)

This rule was based in part on former Rules 36(1)(b) and (2)(a), and was in part new in 1967. As originally adopted, it provided in part that "[u]nless otherwise ordered by the trial or reviewing court, the original papers in the trial court record shall be used and copies need not be furnished by the parties." Thus the use of the original papers was permissive, though the contemplation was that in most instances original papers would be used. In 1979 this provision was deleted and Rule 321 was amended to provide that the record on appeal shall consist of the "entire original trial court record," unless the parties stipulate for or the trial or reviewing court orders "less." See the committee comments to Rule 321.

Commentary
(December 17, 1993)

This rule is amended to explain more specifically the manner in which the record on appeal shall be prepared. The circuit clerk now is required to provide the reviewing court with an inventory of exhibits, and the rule establishes a 250-page limit per volume of record to make the record easier to use.

Rule 325. Transmission of Record on Appeal

Upon payment of the prescribed fee for preparation of the record on appeal, the clerk shall file the record with the reviewing court.

Amended October 21, 1969, effective January 1, 1970; amended July 1, 1985, effective August 1, 1985; amended April 10, 1987, effective August 1, 1987; amended December 17, 1993, effective February 1, 1994; amended May 30, 2008, effective immediately; amended June 22, 2017, eff. July 1, 2017.

Committee Comments
(Revised October 21, 1969)

This rule, based on former Rules 36(2)(c) and 36-1(4), with some additions and changes, recognizes the existing practice of transmission of the record to the reviewing court by a party and affirmatively requires the clerk to deliver the record to the appellant for transmission upon request and payment of the prescribed fee. If such a request is not made but the fee is paid, the clerk is to transmit the record himself. The procedure provided for in the second and third sentence of this rule for filing a certificate in lieu of the record was initiated in 1964 by former Rule 36-1(4) for cases assignable to magistrates. The new procedure eliminates the wasteful and time-consuming step of sending the record to the reviewing court and then immediately having it sent back to the appellant, who normally needs it to prepare the excerpts from record or abstract and his brief. The requirement of filing the record can be met under the new rule by the filing of the certificate obtained from the clerk of the trial court. The appellant can then retain the record on appeal and either file it with his brief or, as will often be convenient, turn it over to the appellee for the latter's use during the writing of his brief. Rule 326 requires that the record be delivered to the reviewing court at the time the reply brief is due or earlier if the reviewing court so orders.

The requirement that a copy of the notice of appeal be sent to the clerk of the reviewing court with the certificate, added in 1969, is for the convenience of the clerk. Failure to comply, or late compliance, with this requirement would not affect the timeliness of the filing of the certificate.

Commentary
(December 17, 1993)

Rule 325 is amended to require the clerk of the circuit court to deliver the certificate in lieu of record directly to the reviewing court for filing, which is consistent with the circuit clerk's responsibility of delivering the record to the reviewing court. Previously, the certificate was delivered to appellant, who then had the responsibility of filing it with the reviewing court, a circuitous procedure. The provision that a copy of the notice of appeal be sent to the reviewing court with the certificate is eliminated as unnecessary because the reviewing court already would have received the notice of appeal under Rules 303 or 307.

Rule 326. Time for Filing Record on Appeal

Except as provided in Rules 306, 307, 308 and 335, the record on appeal shall be filed in the reviewing court within 63 days after the filing of the notice of appeal, or the last notice of appeal if more than one appeal is taken, or, if the time for filing a report of proceedings has been extended,

within 14 days after the expiration of the extended time. Extensions of time for filing the record may be granted by the reviewing court or a judge thereof on motion made before the expiration of the original or extended time or on motion filed within 35 days thereafter supported by a showing of reasonable excuse for failure to file the motion earlier. The movant shall serve any motion for extension of time on the clerk preparing the record on appeal.

Amended October 21, 1969, effective January 1, 1970; amended December 17, 1993, effective February 1, 1994; amended June 22, 2017, eff. July 1, 2017.

Committee Comments
(Revised October 1969)

This rule is based on former Rules 36(2)(d) and (e). Provision is made for the certificate procedure. Time periods are in multiples of seven. The 35-day "safety-valve" provision is similar to the one applicable to the report of proceedings in Rule 323(e).

The insertion in 1969 of the words "or the last notice of appeal if more than one appeal is taken" in the first sentence is based upon Federal Rule of Appellate Procedure 11(a). The 1969 amendment to the rule also requires the delivery of the record to the reviewing court at the time the reply brief is due rather than 14 days thereafter, as formerly.

Rule 327. Notice of Filing Record

Upon the filing of the record on appeal, the clerk of the reviewing court shall provide notice of filing to all parties to the appeal.

Amended October 21, 1969, effective January 1, 1970; amended July 30, 1979, effective October 15, 1979; amended July 1, 1985, effective August 1, 1985; amended December 17, 1993, effective February 1, 1994; amended June 22, 2017, eff. July 1, 2017.

Committee Comments
(Revised July 1, 1985)

This rule requires that upon filing the record on appeal in the reviewing court the appellant shall serve notice of the filing on the other parties to the appeal and send a copy of the notice to the reviewing court. This notice is important because the briefing schedule is framed in terms of the due date of the briefs rather than the date of service of each successive brief, and the due date of the first brief is marked in terms of the date on which the record is filed. Until 1979, it was provided in this rule that after the filing of the record and the payment of the prescribed fee the case should be docketed and that the notice include the docket number. These provisions were eliminated in that year because of the provision in amended Rule 303(f) for the docketing of the appeal at an earlier stage of the proceedings. (See the committee comments to Rule 303(f).) Notice of the docket number is no longer required because it will appear on the docketing statement served under Rule 303(g).

The 1985 change is intended to make the automated record-keeping system in the appellate and supreme courts operate more smoothly.

Commentary
(December 17, 1993)

This amendment simplifies and clarifies the notification process by requiring the clerk of the reviewing court to give notice of the filing of the record on appeal or certificate in lieu of record to all parties.

Rule 328. Supporting Record

Any party seeking relief from the reviewing court before the record on appeal is filed shall file an application or petition with an appropriate supporting record containing enough of the trial court record to show an appealable order or judgment, a timely filed and served notice of appeal (if required for appellate jurisdiction), and any other matter necessary to the application made. The supporting record must be authenticated by the certificate of the clerk of the trial court or by the affidavit of the attorney or party filing it.

The supporting record shall bear the caption of the appeal and be clearly labeled "Supporting Record." The pagination of the supporting record shall conform to the requirements of Rule 324 and the Standards and Requirements for Electronic Filing the Record on Appeal.

Adopted December 17, 1993, effective February 1, 1994; amended June 22, 2017, eff. July 1, 2017.

Commentary
(December 17, 1993)

The new rule on supporting record is an adaptation of former Rule 328, "Short Record," which was repealed in 1979 and incorporated into Rule 361. This rule provides the requirements for a uniform, limited supporting record, which a party is required to file in various situations under a number of different rules.

Rule 329. Supplement to the Record on Appeal

The record on appeal shall be taken as true and correct unless shown to be otherwise and corrected in a manner permitted by this rule. Material omissions or inaccuracies or improper authentication may be corrected by stipulation of the parties or by the trial court, either before or after the record is transmitted to the reviewing court, or by the reviewing court or a judge thereof. Any controversy as to whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by that court and the record made to conform to the truth. If the record is insufficient to present fully and fairly the questions involved, the requisite portions may be supplied at the cost of the appellant. If necessary, a supplement to the record may be certified and transmitted. The clerk of the circuit court shall prepare a certified supplement to the record which shall be filed in the reviewing court upon order issued pursuant to motion.

Amended May 28, 1982, effective July 1, 1982; amended October 14, 2005, effective January 1, 2006; amended June 22, 2017, eff. July 1, 2017.

Committee Comments
(Revised May 1982)

This rule is a comprehensive provision covering amendment of the record on appeal, correction of improper authentication, and the settling of any questions concerning whether the record conforms to the truth. It contains portions of former Rules 36(3) and (4). Under this sweeping provision, it will be possible to supply omissions, correct inaccuracies or improper authentication, or settle any controversy as to whether the record on appeal accurately discloses what occurred at the trial by the procedure that will most appropriately solve the particular problem. In view of the liberal terms of this paragraph, the rather elaborate provisions of former Rule 36(4), requiring that a claim as to improper authentication be raised by motion before or at the time of the filing of the brief of the party making the claim, were eliminated as no longer necessary. Unless there is some real prejudice involved, there will be no incentive for claiming improper authentication.

Rule 329 was amended in 1982 to permit a single judge of the reviewing court to correct the record.

Rule 330. Captions in Reviewing Courts

(a) Any document, other than a brief (see Rule 341(b)), filed in a reviewing court shall contain a caption that includes:

(1) the number of the case in the reviewing court;

(2) the name of the reviewing court, with identification of district and division, where applicable;

(3) the name of the case as it appeared in the trial court, except that the status of each party in the reviewing court shall also be indicated (*e.g.*, plaintiff-appellant). In the case of an action for direct review in the appellate court of a final administrative decision, the parties shall be designated as petitioner(s) and respondent(s) (see Rule 335);

(4) the name of the court (or agency) from which the case was brought and the docket number in that court (or agency), and when applicable in the Supreme Court, the name of the court (or agency) where the case originated and the docket number in that court (or agency);

(5) the name of the trial judge entering the judgment to be reviewed; and

(6) the title of the document.

(b) In all appeals filed from proceedings under the Mental Health and Developmental Disabilities Code, the Mental Health and Developmental Disabilities Confidentiality Act, or from actions for collection of fees for mental health services, the recipient of services shall be identified by first name and last initial or by initials only. The preferred method is first name and last initial. The alternative method of initials only is to be used when, due to an unusual first name or spelling,

the preferred method would create a substantial risk of revealing the recipient's identity. The name of the involved recipient of services shall not appear on any documents filed with the Appellate Court or any subsequent court.

Adopted December 17, 1993, effective February 1, 1994; amended October 1, 2001, effective immediately; amended June 22, 2017, eff. July 1, 2017.

Commentary

This rule has been added to encourage uniformity and requires the use of complete captions on virtually all documents filed in the reviewing court.

Paragraph (b) was added effective October 1, 2001, to help protect the identities of recipients of mental health services. The amendment requires that only their first name and last initial, or their initials, appear on documents filed with the Appellate Court or any subsequent court. The requirement covers the parties' briefs, motions, and other similar papers. The amendment does not require deletion of names from the trial record in preparing the record on appeal, nor does it address the means by which the Appellate Court or a subsequent court maintains the confidentiality of documents appearing in the record.

Rule 331. Return of Record on Appeal

Any paper or physical components of the record on appeal shall be returned by the clerk of the reviewing court to the clerk of the trial court after the final decision of the reviewing court.

Amended July 30, 1979, effective October 15, 1979; amended June 22, 2017, eff. July 1, 2017.

Committee Comment
(Revised 1979)

As originally adopted this rule provided that the record should be returned "unless the record contains no original papers." It was thought at the time that while the record normally would consist primarily of original papers, there would be occasions when the trial court would order otherwise or because in the county in which the trial court sat it was considered desirable to keep original papers available for title searches. In 1979, Rule 321 was amended to provide that the record on appeal shall consist of the entire original common law trial record, unless the parties stipulate for less or the trial or reviewing court orders "less." Thus there will be no case in which the record contains no original papers and the phrase quoted above was deleted.

Rules 332-34. Reserved

Rule 335. Direct Review of Administrative Orders by the Appellate Court

The procedure for a statutory direct review of orders of an administrative agency by the Appellate Court shall be as follows:

(a) The Petition for Review. Unless another time period is provided specifically by the law authorizing review, the petition for review shall be filed in the Appellate Court within 35 days from the date that the order or decision sought to be reviewed was served upon the party affected by any order or decision of the administrative agency, and shall specify the parties seeking review and shall designate the respondent and the order or part thereof to be reviewed. The agency and all other parties of record shall be named respondents. The petition shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article III Forms Appendix.

(b) Service. The petitioner shall serve the petition for review on the agency and on all other parties of record to the proceeding before the agency in the manner prescribed for serving and proving service of a notice of appeal in Rule 303(c).

(c) Other Parties. If any respondent other than the agency wishes to participate in the proceeding in the Appellate Court, that respondent shall file an appearance, and those who do shall be parties in the Appellate Court.

(d) The Record. The entire record before the administrative agency shall be the record on review unless the agency and the petitioner stipulate to omit portions. Omitted portions shall be transmitted to the Appellate Court at any time on the request of the agency, the petitioner or any other party, which request shall be served on all parties, or on order of the court. The record shall be filed with the Appellate Court and shall contain, be arranged, prepared, numbered, and certified as required for the record on appeal under Rules 321 through 325 and the Standards and Requirements for Electronic Filing the Record on Appeal.

(e) Time for Filing Record. The agency shall file the record within 35 days after the filing of the petition for review. Extensions of time for filing the record may be granted by the reviewing court or a judge thereof on motion made before the expiration of the original or extended time or on motion filed within 35 days thereafter supported by a showing of reasonable excuse for failure to file the motion earlier.

(f) Time for Filing Briefs. The time for filing briefs specified in Rule 343 begins to run from the day the record is filed.

(g) Stay. Application for a stay of a decision or order of an agency pending direct review in the Appellate Court shall ordinarily be made in the first instance to the agency. A motion for stay may be made to the Appellate Court or to a judge thereof, but the motion shall show that application has been made to the agency and denied, with the reasons, if any, given by it for denial, or that application to the agency for the relief sought was not practicable. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavit. With the motion shall be filed such parts of the record as are relevant to the relief sought. Reasonable notice of the motion shall be given to all parties to the proceeding in the Appellate Court. The court may condition relief under this rule upon the filing of a bond or other appropriate security.

(h) In any proceeding for the review of a decision by the Illinois State Labor Relations Board, the Illinois Local Labor Relations Board, or the Illinois Educational Labor Relations Board, a

cross-petition for enforcement may be filed by the Board in accordance with the procedures set forth in Rule 361 governing motion practice in the Appellate Court, except that no proposed order shall be submitted.

(i) Application of other Rules and Administrative Review Law.

(1) Insofar as appropriate, the provisions of Rules 301 through 373 (except for Rule 326) are applicable to proceedings under this rule. As used in any applicable rule, the term "appellant" includes a petitioner and the term "appellee" includes a respondent in proceedings to review or enforce agency orders.

(2) Sections 3-101, 3-108(c), 3-109, 3-110, and 3-111 of the Code of Civil Procedure are applicable to proceedings to review orders of the agency. The Appellate Court has all of the powers which are vested in the circuit court by the above enumerated sections.

(**j) Return of the Record on Appeal.** Any paper or physical components of the record on appeal shall be returned by the clerk of the reviewing court to the clerk of the administrative agency after the final decision of the reviewing court.

Effective July 1, 1971; amended May 28, 1982, effective July 1, 1982; amended April 27, 1984, effective July 1, 1984; amended December 17, 1993, effective February 1, 1994; amended Oct. 15, 2015, eff. Jan. 1, 2016; amended June 22, 2017, eff. July 1, 2017.

Committee Comments
(Revised December 17, 1993)

The General Assembly has provided by law that a final order of the Pollution Control Board (415 ILCS 5/41 (West 1992)), a judgment concerning disclosure of campaign contributions and expenditures from the State Board of Elections (10 ILCS 5/9-22 (West 1992)), a final order of the Illinois State Labor Relations Board, Illinois Local Labor Relations Board (5 ILCS 315/11 (West 1992)) or the Illinois Educational Labor Relations Board (115 ILCS 5/16 (West 1992)), a decision from the Illinois Human Rights Commission (775 ILCS 5/8-111 (West 1992)), any order or decision of the Illinois Commerce Commission (220 ILCS 5/10-201 (West 1992)), final orders of the Illinois Gaming Board (230 ILCS 10/17.1 (West 1992)), final decisions of the Property Tax Appeal Board where a change in assessed valuation of $300,000 or more was sought (35 ILCS 205/111.4 (West 1992 Supp.)) and a certain initial license issuance by the Director of the Department of Nuclear Safety and in connection therewith certain determinations of the Low-Level Radioactive Waste Disposal Facility Siting Commission (420 ILCS 20/18 (West 1992)) may be appealed directly to the Appellate Court.

Rule 335 prescribes the procedure for the review of orders of any agency which the legislature has assigned to the Appellate Court.

The rule is based upon the procedures followed under the Administrative Review Act, the Illinois rules governing appeals, and the Federal Rules of Appellate Procedure which relate to review of administrative orders by an appellate court. The orders of many Federal agencies have long been directly reviewed by the United States Courts of Appeals.

Only a few provisions of the rule require comment.

Since the petition for review serves the function of the notice of appeal, and nothing else, it should in form be as simple as the notice of appeal, as it is in the Federal practice. The statement of the questions to be presented for review is left to the appellant's brief as in other appeals and for the same reasons.

The Illinois practice of permitting parties before the administrative agency to become parties before the Appellate Court merely on filing of a notice of appearance is preferable to the Federal practice of requiring a motion to intervene.

Under both Illinois and Federal appellate practice and under the Illinois Administrative Review Act the entire record before the agency is the record before the reviewing court, wherever that record may be at any particular time. The rule is designed to insure that the record will be available to the parties when needed for the preparation of briefs, as under present Rule 325 for ordinary appeals, and to the reviewing court when it is needed there. Any portions of the record not already filed in the Appellate Court shall be transmitted thereto on request of the court, the agency, or any party. Since the report of the proceedings before the administrative agency will normally have been transcribed and be available by the time of the administrative decision, a shorter period for filing the record is allowed than in other Illinois appeals. This also conforms to the public interest in expediting review of these cases.

In 1984 subparagraph (d) was amended to require that the agency should arrange, prepare, bind, and certify the record, as near as possible, in the way the record on appeal must be prepared under Rule 324.

Commentary
(December 17, 1993)

Paragraph (h) is included to indicate that petitions for enforcement of labor board orders may be brought in the Appellate Court (see *Central City Education Association v. Illinois Educational Labor Relations Board* (1992), 149 Ill. 2d 496) and are treated as motions before the reviewing court without the need for formal briefing.

Rules 336-40. Reserved

Part D. Briefs

Rule 341. Briefs

(a) Form of Briefs. Briefs shall be submitted in clear, black text on white pages, each measuring 8½ by 11 inches. The text must be double-spaced; however, headings may be single-spaced. Margins must be at least 1½ inch on the left side and 1 inch on the other three sides. Each page shall be numbered within the bottom margin. Quotations of two or more lines in length may

be single-spaced; however, lengthy quotations are not favored and should be included only where they will aid the court's comprehension of the argument. Footnotes are discouraged but, if used, may be single-spaced.

Typeface must be 12-point or larger throughout the document, including quoted material and any footnotes. Condensed type is prohibited.

(b) Length of Briefs.

(1) Length Limitation. The brief of appellant and brief of appellee shall each be limited to 50 pages, and the reply brief to 20 pages. Alternatively, the brief of appellant and brief of appellee shall each be limited to no more than 15,000 words and the reply brief to 6,000 words. This limitation excludes pages and words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a). Cross-appellants and cross-appellees shall each be allowed an additional 30 pages or, alternatively, 9,000 words, and the cross-appellant's reply brief shall not exceed 20 pages or, alternatively, 6,000 words.

(2) Motions. Motions to file a brief in excess of the length limitation of this rule are not favored. Such a motion shall be filed not less than 10 days before the brief is due or not less than 5 days before a reply brief is due and shall state the excess number of pages or words requested and the specific grounds establishing the necessity for excess pages or words. The motion shall be supported by affidavit or verification by certification under Section 1-109 of the Code of Civil Procedure of the attorney or self-represented litigant. Any affidavit shall be sworn to before a person who has authority under the law to administer oaths.

(c) Certificate of Compliance. The attorney or self-represented litigant shall submit with the brief his or her signed certification that the brief complies with the form and length requirements of paragraphs (a) and (b) of this rule, as follows:

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is ___ pages or words.

(d)Covers. The cover of the brief shall contain: the number of the case in the reviewing court and the name of that court; the name of the court or administrative agency from which the case was brought; the name of the case as it appeared in the lower tribunal, except that the status of each party in the reviewing court shall also be indicated (*e.g.*, plaintiff-appellant); the name of the trial judge entering the judgment to be reviewed; and the individual names and addresses of the attorneys and their law firm (or of the party if the party has no attorney) filing the brief shall also be stated.

The colors of the covers of the documents, whether electronic or paper, shall be: appellant's brief or petition, white; appellee's brief or answer, light blue; appellant's reply brief, light yellow; reply brief of appellee, light red; petition for rehearing, light green; answer to petition for rehearing,

tan; and reply on rehearing, orange. If a separate appendix is filed, the cover shall be the same color as that of the brief which it accompanies.

(e) Duplicate Copies and Proof of Service. Electronically filed briefs shall be considered the official original. A court of review may, in its electronic filing procedures, require duplicate paper copies bearing the court's electronic file stamp. Such copies shall be printed one-sided and securely bound on the left side in a manner that does not obstruct the text. Such copies shall be received by the clerk within five days of the electronic notification generated upon acceptance of an electronically filed document.

The brief shall be served upon each other party to the appeal represented by separate counsel. Proof of service shall be filed with all briefs.

(f) References to Parties. In the brief the parties shall be referred to as in the trial court, *e.g.*, plaintiff and defendant, omitting the words appellant and appellee and petitioner and respondent, or by using actual names or descriptive terms such as "the employee," "the injured person," "the taxpayer," "the railroad," etc.

In all appeals involving juveniles filed from proceedings under the Juvenile Court Act or the Adoption Act, and in all appeals under the Mental Health and Developmental Disabilities Code, the Mental Health and Developmental Disabilities Confidentiality Act, or from actions for collection of fees for mental health services, the respective juvenile or recipient of mental-health services shall be identified by first name and last initial or by initials only.

The preferred method is the first name and last initial. The alternative method of initials only is to be used when, due to an unusual first name or spelling, the preferred method would create a substantial risk of revealing the individual's identity. The name of the involved juvenile or recipient of services shall not appear in the brief.

(g) Citations. Citations shall be made as provided in Rule 6.

(h) Appellant's Brief. The appellant's brief shall contain the following parts in the order named:

(1) A table of contents, including a summary statement, entitled "Points and Authorities," of the points argued and the authorities cited in the Argument. This shall consist of the headings of the points and subpoints as in the Argument, with the citation under each heading of the authorities relied upon or distinguished, and a reference to the page of the brief on which each heading and each authority appear.

(2) An introductory paragraph stating (i) the nature of the action and of the judgment appealed from and whether the judgment is based upon the verdict of a jury, and (ii) whether any question is raised on the pleadings and, if so, the nature of the question.

Illustration:

"This action was brought to recover damages occasioned by the alleged negligence of the defendant in driving his automobile. The jury rendered a verdict for the plaintiff upon which the court entered the judgment from which this appeal is taken. No questions are

raised on the pleadings."

(3) A statement of the issue or issues presented for review, without detail or citation of authorities.

Illustration:

Issue Presented for Review:

"Whether the plaintiff was guilty of contributory negligence as a matter of law."

[or]

"Whether the trial court ruled correctly on certain objections to evidence."

[or]

"Whether the jury was improperly instructed."

The appellant must include a concise statement of the applicable standard of review for each issue, with citation to authority, either in the discussion of the issue in the argument or under a separate heading placed before the discussion in the argument.

(4) A statement of jurisdiction:

(i) In a case appealed to the Supreme Court directly from the trial court or as a matter of right from the Appellate Court, a brief statement under the heading "Jurisdiction" of the jurisdictional grounds for the appeal to the Supreme Court.

(ii) In a case appealed to the Appellate Court, a brief, but precise statement or explanation under the heading "Jurisdiction" of the basis for appeal including the supreme court rule or other law which confers jurisdiction upon the reviewing court; the facts of the case which bring it within this rule or other law; and the date that the order being appealed was entered and any other facts which are necessary to demonstrate that the appeal is timely. In appeals from a judgment as to all the claims and all the parties, the statement shall demonstrate the disposition of all claims and all parties. All facts recited in this statement shall be supported by page references to the record on appeal.

(5) In a case involving the construction or validity of a statute, constitutional provision, treaty, ordinance, or regulation, the pertinent parts of the provision verbatim, with a citation of the place where it may be found, all under an appropriate heading, such as "Statutes Involved." If the provision involved is lengthy, its citation alone will suffice at this point, and its pertinent text shall be set forth in an appendix.

(6) Statement of Facts, which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal in the format as set forth in the Standards and Requirements for Electronic Filing the Record on Appeal.

(7) Argument, which shall contain the contentions of the appellant and the reasons therefor,

with citation of the authorities and the pages of the record relied on. Evidence shall not be copied at length, but reference shall be made to the pages of the record on appeal where evidence may be found. Citation of numerous authorities in support of the same point is not favored. Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.

(8) A short conclusion stating the precise relief sought, followed by the names of counsel as on the cover.

(9) An appendix as required by Rule 342.

(i) Briefs of Appellee and Other Parties. The brief for the appellee and other parties shall conform to the foregoing requirements, except that items (2), (3), (4), (5), (6), and (9) of paragraph (h) of this rule need not be included except to the extent that the presentation by the appellant is deemed unsatisfactory.

(j) Reply Brief. The reply brief, if any, shall be confined strictly to replying to arguments presented in the brief of the appellee and need contain only Argument.

(k) Supplemental Brief on Leave to Appeal. A party allowing a petition for leave to appeal or for appeal as a matter of right or an answer thereto to stand as his or her main brief, may file a supplemental brief, so entitled, containing additional material, and omitting any of the items set forth in paragraph (h) of this rule to the extent that they are adequately covered in the petition or answer. The Points and Authorities in the supplemental brief need relate only to the contents of that brief.

Amended October 21, 1969, effective January 1, 1970; amended July 30, 1979, effective October 15, 1979; amended January 5, 1981, effective February 1, 1981; amended February 19, 1982, effective April 1, 1982; amended May 28, 1982, effective July 1, 1982; amended April 27, 1984, and May 16, 1984, effective July 1, 1984; amended April 10, 1987, effective August 1, 1987; amended May 21, 1987, effective August 1, 1987; amended June 12, 1987, effective immediately; amended May 18, 1988, effective August 1, 1988; amended January 20, 1993, effective immediately; amended December 17, 1993, effective February 1, 1994; amended May 20, 1997, effective July 1, 1997; amended April 11, 2001, effective immediately; amended October 1, 2001, effective immediately; amended May 24, 2006, effective September 1, 2006; amended March 16, 2007, effective immediately; amended June 4, 2008, effective July 1, 2008; amended Feb. 6, 2013, eff. immediately; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended June 22, 2017, eff. July 1, 2017; amended Sept. 15, 2017, eff. Nov. 1, 2017; amended May 25, 2018, eff. immediately; amended Sept. 30, 2020, eff. Oct. 1, 2020.

Committee Comments
(revised Sept. 15, 2017)

This rule was based upon former Supreme Court Rule 39, effective until January 1, 1967, which in turn was based upon former Uniform (and later Second, Third, Fourth, and Fifth District) Appellate Court Rule 7. There were no major changes.

Paragraph (a)

This paragraph deals with the length of briefs and the use of footnotes. It is derived from the second, third, and fourth sentences of former Rule 39(1). Three printed pages will normally contain approximately as many words as four unprinted pages, so the length limitations are substantially the same for printed and unprinted briefs.

The provision that footnotes are to be in the same size type as required for the text of the brief was deleted. Footnotes are to be used sparingly. Rule 344(b) prescribes 10-point type on 11-point slugs, instead of the 11-point type used in the body. This use of smaller type is conventional in the printing of legal texts, law reviews, the opinions of the Supreme Court of the United States, and other comparable materials. It is believed that the limited use of this slightly smaller type will not impose a burden on the courts.

In 1984 subsection (a) was amended to reduce from 75 to 50 the number of pages allowed to be in a printed brief and from 100 to 75 the number allowed in a brief that is not printed, and excludes from that page limitation those matters which are required by Rule 342(a) to be appended thereto.

Paragraph (b)

This is a revision of former Rule 40(1). The alternative word limitation for determining the maximum length of briefs is based on a uniform assumption of 300 words per page.

Paragraph (c)

This paragraph is derived in part from the first sentence of former Rule 39(1), except that it recognizes certain existing practices not permitted by the former rule if it was read literally. One is the use of the designations “appellant” and “appellee,” together with the designation of the party in the trial court, in the title of the case appearing in the caption. The other is that the parties may be referred to by actual names or descriptive terms instead of as plaintiff or defendant, which in many instances is desirable to avoid confusion.

The paragraph was amended effective October 1, 2001, to help protect the identities of recipients of mental health services. The amendment requires that only their first name and last initial, or their initials, appear on documents filed with the Appellate Court or any subsequent court. The requirement covers the parties’ briefs, motions, and other similar papers. The amendment does not require deletion of names from the trial record in preparing the record on appeal, nor does it address the means by which the Appellate Court or a subsequent court maintains the confidentiality of documents appearing in the record.

Paragraph (d)

Effective January 20, 1993, the requirements applicable to citations to cases, textbooks and statutes were placed in Rule 6, which is applicable to all documents filed in court, including briefs.

Paragraph (e)

Paragraph (e) is a substantial revision of portions of former Rule 39.

In 1981 the subparagraphs were restructured to make "Points and Authorities" the first part of the brief, so that it might act as a table of contents.

Subparagraph (1) is based upon the first three sentences of the paragraph designated II of former Rule 39(1). The revised provision specifically relates the Points and Authorities to the Argument. The same headings of the points and subpoints are to be used both here and in the Argument. The former provision that the three cases most relied on shall be cited first under each point was deleted in favor of the last sentence of subparagraph (e), which provides for ranking cases "as near as may be in the order of their importance."

The "introductory paragraph" provided for in subparagraph (2) will ordinarily not be captioned as such in the brief. As the illustration shows, the introductory paragraph is for the purpose of informing the court of the general area of the law in which the case falls, whether there was a jury trial, and whether there is a pleading question and if so what it is. The practice of many lawyers was to include in the statement of "The Nature of the Action" called for by the former rule much more detail than the courts wanted at this place in the brief.

The former requirement that "The Nature of the Case" include a statement of the party's "theory of the case" also produced much more detail than the rule contemplated.

Subparagraph (3) substitutes for the "theory of the case" a statement of "the issue or issues presented for review." Again, the court does not want detail at this point in the brief, as the illustration in the rule following this subparagraph attempts to make clear. The statement of the issue presented for review is not to be an elaborately framed legal question. Its purpose is to give the court a general idea of what the case is about. The court is not ready at this stage to appreciate the details. It should be noticed, for example, that the first alternative illustration of a statement of the issue presented for review does not state what conduct it is that one of the parties contends is contributory negligence as a matter of law. The second alternative does not describe the objections or the evidence to which they relate. The third alternative does not describe the instruction of which the complaint is made.

Subparagraph (4) is in part based upon former Rule 28-1, B. A similar provision appears in the rules of the Supreme Court of the United States. (Rule 40, 1(b).) In cases appealed to the Illinois Supreme Court as of right, it is important that the court be satisfied at the outset that jurisdiction exists. (See the comments to Rule 302.)

Subparagraph (4)(ii) was expanded effective February 1, 1994, to provide more comprehensive examples of what must be included in the statement demonstrating jurisdiction in the Appellate Court.

Subparagraph (5) is a combination of the third paragraph of former Rule 39(1) and paragraph 1(c) of Rule 40 of the rules of the Supreme Court of the United States.

Subparagraph (6) was based upon the paragraph numbered III of former Rule 39(1). The

provision with respect to the citation of exhibits was new, as were the illustrations as to the form of the citations to the record. This subparagraph was amended in 1979 to delete reference to the preparation of excerpts from record to reflect the amendment of Rule 342 to eliminate the preparation and duplication of excerpts from the record except for the inclusion of copies of stated documents as an appendix to the brief, and to eliminate the preparation and filing of an abstract except on order of the reviewing court. (See Rule 342(a).) Because the elimination of excerpts and an abstract in most cases lends added importance to the accuracy and fairness with which the facts are stated in the brief, the first sentence of the subparagraph was amended to emphasize this point. A similar amendment was made to Rule 315(b)(4). See the committee comments to Rule 342.

Subparagraph (7) is a revision of the paragraph numbered IV of former Rule 39(1). The description of what the Argument is to contain is somewhat amplified. The provision admonishing against citation of numerous authorities was new. The limitation of the Argument to points made and cases cited in the Points and Authorities is no longer appropriate, since the Points and Authorities is to be derived from the Argument. The former provision that a point "made but not argued may be considered waived" was changed to the affirmative statement of the last sentence of the paragraph that failure to argue results in waiver and, further, that a point that has not been argued shall not be raised subsequently.

Subparagraph (8), requiring a short conclusion stating the precise relief sought, was new. It is customary to include a conclusion in a brief, but the relief sought is not always stated in the conclusion. This provision requires the party to end his brief by telling the court what relief he wants.

Paragraph (f)

The predecessor of this paragraph is the second paragraph following the paragraph numbered IV in former Rule 39(1). The new provision is simplified. The requirement that the appellee's brief state the propositions relied upon to sustain the judgment "as far as practicable, in the same order as the points of appellant" was not brought forward into the present rule. When the nature of the subject matter permits, counsel will normally follow the order established by his opponent in the interest of making his brief as convenient as possible for the court to use. Sometimes effective advocacy requires that a different order be adopted. In the opinion of the committee it is not possible to regulate this matter by rule.

Paragraph (g)

Paragraph (g) is the last paragraph of former Rule 39(1), without change of substance.

Paragraph (h)

Paragraph (h) as it appeared in the revised rules effective January 1, 1967, was deleted in October 1969, as unnecessary in light of paragraph (b) of Rule 343, adopted at that time.

What is now paragraph (h) was paragraph (i) of the revision adopted effective January 1, 1967, and was new at that time, although it provides specifically for a practice that was often employed under the former rules. This paragraph makes clear the extent to which the requirements of Rule 341 apply to a supplemental brief filed in supplement of, rather than in lieu of, a petition for leave to appeal or an answer that party has allowed to stand as his main brief.

Rule 342. Appendix to the Brief. The appellant's brief shall include, as an appendix, a table of contents to the appendix, the judgment appealed from, any opinion, memorandum, or findings of fact filed or entered by the trial judge or by any administrative agency or its officers, any pleadings or other materials from the record that are the basis of the appeal or pertinent to it, the notice of appeal, and a complete table of contents, with page references, of the record on appeal. The table shall state:

(1) the nature of each document, order, or exhibit, *e.g.*, complaint, judgment, notice of appeal, will, trust deed, contract, and the like;

(2) in the case of pleadings, motions, notices of appeal, orders, and judgments, the date of filing or entry; and

(3) the names of all witnesses and the pages on which their direct examination, cross examination, and redirect examination begin.

In addition, in cases involving proceedings to review orders of the Illinois Workers' Compensation Commission, the appellant's brief shall also include as part of the appendix decisions of the arbitrator and the Commission.

The appellee's brief and the appellant's reply brief may include in a supplementary appendix other materials from the record that also are the basis of the appeal or are essential to any understanding of the issues raised in the appeal.

The pages of the appendix shall be numbered consecutively with the letter "A" preceding the number of each page. If an appendix would expand the size of the PDF comprising the combined brief and appendix to greater than 150 megabytes, it may be filed as a separate PDF and labeled "Separate Appendix."

Amended October 21, 1969, effective January 1, 1970; amended July 30, 1979, effective October 15, 1979; amended June 1, 1984, effective July 1, 1984; amended May 18, 1988, effective August 1, 1988; amended December 17, 1993, effective February 1, 1994; amended October 15, 2004, effective January 1, 2005; amended June 22, 2017, eff. July 1, 2017; Sept. 26, 2019, eff. Oct. 1, 2019.

Commentary
(December 17, 1993)

A separate table of contents to the appendix is added as a requirement under paragraph (a). The rule also provides that all pages of the appendix must be numbered to permit easy reference.

Committee Comments
(Revised June 1, 1984)

Rule 342 was substantially rewritten in 1979. Prior to 1964 it was required that the appellant prepare and file an abstract of the record on appeal. In that year former Rule 36-1 was adopted (29 Ill. 2d R. 36-1), giving the appellant in appeals referable to magistrates the option of substituting for the abstract excerpts from the record, containing the judgment or order appealed from, the notice of appeal, and "the parts of the record deemed essential for the judges of the reviewing court to read in order to decide the issues presented" (29 Ill. 2d R. 36-1(8)). Provision was made for an exchange of designations of items to be included in the excerpts, the excerpts to be filed by the appellant no later than 14 days after the due date of the appellee's brief. At the time it was thought that reproduction of the actual pages from the record was at once less time consuming, and therefore less expensive, than the preparation of a narrative statement, and also more accurate. Rule 342, effective January 1, 1967, extended the provision for the filing of excerpts from record to cover all appeals. Extensive amendments were adopted effective January 1, 1970.

As revised in 1979, Rule 342 requires that the appellant include in its brief an appendix containing a copy of the judgment appealed from, any opinion, memorandum, or findings of fact filed or entered by the trial judge, the notice of appeal, and a table of contents of the record (paragraph (a)). Otherwise it is not required that any parts of the record be duplicated. All reference to excerpts of record were therefore deleted. The contemplation is that in most instances the appeal will be heard on the original papers. It is provided, however, that the reviewing court may order that an abstract be prepared and filed. Therefore the provisions of the rule governing the contents, form, and filing of an abstract are retained. Appropriate changes were made in other rules that included reference to the preparation and filing of excerpts from the record. (See Rules 306, 307, 308, 317, 344, 607, and 612.) Since in most cases there will no longer be either abstract or excerpts, the duty of the parties to make a fair and accurate statement of the facts in their briefs, always important, has become even more so, and this duty has been emphasized by amendment to Rules 315(b)(4) and 341(e)(6).

In 1984 subparagraph (a) was amended to require that copies of the decisions of both the arbitrator and the Commission be included in the appendix in all cases involving proceedings to review orders of the Industrial Commission.

Rule 343. Times for Filing and Serving Briefs

(a) Time. Except as provided in subparagraph (b) below and elsewhere in these rules (see Rules 306, 307, 308, 315, and 317), the brief of the appellant shall be filed in the reviewing court within 35 days from the filing of the record on appeal. Within 35 days from the due date of the appellant's brief, or in the case of multiple appellants, the latest due date of any appellant's brief, the appellee shall file his or her brief in the reviewing court. Within 14 days from the due date of the appellee's brief, or in the case of multiple appellees, the latest due date of any appellee's brief, the appellant may file a reply brief.

(b) Cross-Appeals and Separate Appeals. Unless otherwise ordered by the reviewing court or a judge thereof, briefs of cross-appellants and separate appellants shall be filed as follows:

(1) *Cross-Appeals.* A cross-appellant shall file a single brief as appellee and cross-appellant at the time his or her brief as appellee is due; the appellant's answer to the arguments on the cross-appeal shall be included in appellant's reply brief, which shall be filed within 35 days from the due date of the single brief filed by the cross-appellant; and the cross-appellant may file a reply brief confined strictly to replying to those arguments raised on the cross-appeal within 14 days after the due date of the appellant's reply brief.

(2) *Separate Appeals.* A separate appellant shall follow the same briefing schedule as prescribed for the appellant. All appellees shall file their briefs within 35 days of the due date of appellants' briefs. Any replies may be filed within 14 days of the due date of appellees' briefs.

(c) Extending or Shortening Time. The reviewing court or a judge thereof, *sua sponte* or upon the motion of a party supported by affidavit or verification by certification under section 1-109 of the Code of Civil Procedure showing a good cause, may extend or shorten the time of any party to file a brief. (See Rule 361.)

Amended October 21, 1969, effective January 1, 1970; amended effective September 1, 1974; amended December 17, 1993, effective February 1, 1994; amended May 24, 2006, effective September 1, 2006; amended March 26, 2008, effective July 1, 2008.

Committee Comments
(March 26, 2008)

Paragraph (b)(1) was amended to make clear that the appellant has 35 days from the due date of the single brief filed by the cross-appellant to file a reply brief that includes the appellant's answer to the arguments on the cross-appeal rather than the 14 days generally allowed for filing reply briefs set forth in paragraph (a). This amendment makes no substantive change to this rule.

Commentary
(December 17, 1993)

Paragraph (a) has been modified to make clear that only one brief need be filed when responding to multiple briefs of opponents filed at separate times.

Paragraph (b)(2) has been changed to eliminate the former practice of automatic staggering of the briefing schedule in cases involving separate appeals.

Committee Comments
(Revised September 1, 1974)

This rule, governing the times for filing and serving briefs in all reviewing courts, is based in part upon former Supreme Court Rules 41(2) and (4) and Second, Third, Fourth, and Fifth District (and earlier Uniform) Appellate Court Rule 9. The provision in the former rule that if a brief or abstract was not filed within the time prescribed the appeal would be dismissed on the call of the

docket was omitted as both too strict and unnecessary. The court has the inherent power to dismiss an appeal for any breach of its rules, although a less drastic remedy would normally suffice. In the rare instances in which a brief of an appellant is inexcusably not filed on time, the court can exercise this power without any provision in the rule specifically authorizing it to do so.

The committee recommended 35 days as the time period for the main briefs best calculated to fit the requirements of the bar and the reviewing courts. The committee recognized the importance of providing a long enough period to permit the preparation of a brief in the ordinary case without the necessity of an extension of time and a short enough period to permit prompt disposition of the business of the reviewing courts. Five weeks would seem to be a realistic compromise. The time for filing the reply brief was fixed at 14 days, consistent with the multiples-of-seven policy.

The rule establishes the time for filing briefs in all cases on appeal from final judgments of the circuit court, whether to the Appellate Court (Rules 303 and 304), or directly to the Supreme Court (Rule 302). It applies to appeals from orders of the circuit court granting a new trial (Rule 306) and to interlocutory appeals by permission (Rule 308), subject to the provisions in those rules measuring the 35 days allowed for the filing of the appellant's brief from the date of the order allowing the appeal, rather than from the filing of the record on appeal. Rule 307 provides for a special, shorter timetable for the filing of briefs in interlocutory appeals as of right. Appeals from the Appellate Court to the Supreme Court on certificate (Rule 316) are governed by Rule 343, but appeals from the Appellate Court to the Supreme Court on petition for leave to appeal (Rule 315) or petition for appeal as a matter of right (Rule 316) are governed by the provisions of Rule 315(g), which sets forth the timetable for filing briefs in such cases. Paragraph (c) of Rule 343 is applicable to all appeals.

In 1969 former paragraph (b) was relettered (c) and present paragraph (b) was inserted to provide the bar with explicit directions as to the briefs on cross-appeals and separate appeals.

The rule was amended in 1974 to delete material referring to appeals on petition for leave to appeal. This material was placed in Rules 306, 308, and 315. As part of the same amendment the words "with proof of service" were deleted and Rule 344(a) amended to set forth the requirement of filing proof of service.

Rule 344. Reserved

Rule 345. Briefs Amicus Curiae

(a) Leave or Request of Court Necessary. A brief *amicus curiae* may be filed only by leave of the court or of a judge thereof, or at the request of the court. A motion for leave must be accompanied by the proposed brief and shall state the interest of the applicant and explain how an *amicus* brief will assist the court.

(b) Forms; Conditions; Time. A brief of an *amicus curiae* shall follow the form prescribed for the brief of an appellee, shall identify the amicus as such on the cover of the brief, and shall conform to any conditions imposed by the court. Unless the court or a judge thereof specifies otherwise, it shall be filed on or before the due date of the initial brief of the party whose position it supports. The color of the cover shall be the same as that of the party's brief whose position it

supports.

(c) Oral Argument. *Amicus curiae* will not be allowed to argue orally.

Amended February 19, 1982, effective April 1, 1982; amended May 28, 1982, effective July 1, 1982; amended December 17, 1993, effective February 1, 1994, amended December 6, 2005, effective immediately; amended September 20, 2010, effective immediately.

Rules 346-50. Reserved

Part E. Oral Argument

Rule 351. Sequence and Manner of Calling Cases for Oral Argument

Cases in the reviewing court shall be numbered in the order in which they are docketed. They shall be called for argument or submitted without argument in the sequence and manner provided by the administrative orders of the court. The clerk shall give counsel advance notice as to when the case is to be argued, the amount of time for oral argument, and the requirement of advance registration, if any. The hour set shall be as definite as the business of the court permits. Counsel shall acknowledge receipt of the notice of oral argument and advise the clerk if they intend to argue.

Amended December 17, 1993, effective February 1, 1994.

Committee Comments

This rule replaces former Rule 42. Applicable to all reviewing courts, it leaves each court free to provide by administrative orders for the sequence and manner of calling cases for oral argument. The provision as to the notice to be given by the clerk to counsel is new. The last sentence is also new. If the business of the court permits it to set arguments for two or more starting times during the day, there will be a substantial saving of time and expense to counsel and parties.

Rule 352. Conduct of Oral Arguments

(a) Request; Waiver; Dispensing With Oral Argument. A party shall request oral argument by stating at the bottom of the cover page of his or her brief that oral argument is requested. If the party has elected to allow a petition for leave to appeal or answer to stand as the party's brief, the party may file a request for oral argument, with proof of service upon opposing parties. This request shall be filed within the time that the party could have filed a further brief. If any party so requests, all other parties may argue without an additional request.

No party may argue unless that party has filed a brief as required by the rules and paid any fee required by law. A party who has requested oral argument and who thereafter determines to waive oral argument shall promptly notify the clerk and all other parties. Any other party who has filed a brief without requesting oral argument may then request oral argument upon prompt notice to

the clerk and all other parties.

After the briefs have been filed, the court may dispose of any case without oral argument if no substantial question is presented, but this power shall be exercised sparingly and only upon the entry of a written order stating with specificity why such power is being exercised in the affected case. Notwithstanding the foregoing, oral argument shall be held in any case in which at least one member of the panel assigned to the case requests it.

(b) Length. Unless the court otherwise orders, each side shall be allowed not to exceed 20 minutes for its main argument. In all cases, the appellant shall have not to exceed an additional 10 minutes strictly confined to rebuttal. If only one side argues, the argument shall not exceed 15 minutes. The court may grant additional time on motion filed in advance of the date fixed for hearing if it appears that additional time is necessary for the adequate presentation of the case. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) Reading Prohibited. Reading at length from the record, briefs, or authorities cited will not be permitted.

(d) Divided Arguments. No more than two counsel will be heard from each side except by leave of court, which will be granted when there are several parties on the same side with diverse interests. Divided arguments are not favored and care shall be taken to avoid duplication of arguments.

(e) Multiple Parties. If a case involves appeals by more than one party the sequence of oral argument shall be as the parties agree or as the court directs.

(f) Limitation on Briefs and Memoranda. No brief or memorandum shall be filed after the due date of the reply brief or after oral argument except by leave of court or a judge thereof.

(g) When Oral Argument Not Requested. If a case is submitted to the court without request for oral argument, it shall be decided on the briefs unless the court orders oral argument.

Amended effective July 1, 1975; amended May 28, 1982, effective July 1, 1982; amended June 19, 1989, effective August 1, 1989; amended August 18, 1989, effective September 1, 1989; amended December 17, 1993, effective February 1, 1994; amended Feb. 6, 2013, eff. immediately; amended June 22, 2017, eff. July 1, 2017; amended May 25, 2018, eff. July 1, 2018.

Committee Comments
(Revised July 1, 1975)

This rule is based upon former Supreme Court Rule 43. See also former Second, Third, Fourth, and Fifth District (and earlier Uniform) Appellate Court Rule 13(4).

Paragraph (a)

Paragraph (a) is based largely upon the first paragraph of former Rule 43. The last two sentences are new; the former provision did not require notice of an election to waive oral

argument, but provided that if a party appeared at the argument and the other party failed to appear, the party who appeared could argue anyway. The new provision, stated in the last two sentences of the paragraph, requires prompt notice of waiver and a prompt notice by the opposite party if he desires oral argument.

The last paragraph was added in 1975. As to the length of argument, see comment to paragraph (b).

Paragraph (b)

This paragraph is based in part upon the second paragraph of former Rule 43. The provision for requesting additional time by motion filed in advance of the date fixed for hearing is new. The final sentence, which reminds counsel that he need not use all the time allowed and which provides that the court may terminate the argument whenever in its judgment further argument is unnecessary, is also new.

Paragraph (a) limits the power of the court to deny permission to argue orally to cases in which it is determined that no substantial question is presented, and cautions that the power to dispense with oral argument is to be used sparingly. Paragraph (b), on the other hand, leaves the court free to limit the length of the argument in advance, as well as to terminate it once it has begun. when argument is to be limited in advance, ordinarily counsel should be notified reasonably in advance of the date set for argument.

Paragraph (c)

This provision is taken from Second, Third, Fourth, and Fifth District (and earlier Uniform) Appellate Court Rule 13(4), second paragraph, last sentence.

Paragraph (d)

This paragraph is based upon the first sentence of the third paragraph of former Rule 43 and paragraph 4 of Rule 44 of the rules of the Supreme Court of the United States.

Paragraph (e)

This paragraph is new.

Paragraph (f)

This paragraph is derived from the second sentence of former Supreme Court Rule 43 (which did not provide for the filing of another brief upon leave of court or a judge thereof) and the last paragraph of former Second, Third, Fourth, and Fifth District (and earlier Uniform) Appellate Court Rule 13(4).

Paragraph (g)

This paragraph is new.

Rules 353-60. Reserved

Part F. Other Provisions

Rule 361. Motions in Reviewing Court

(a) Content of Motions; Supporting Record; Other Supporting Documents. Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion. Motions shall be in writing and shall state the relief sought and the grounds therefor. If the record has not been filed the movant shall file with the motion an appropriate supporting record (Rule 328). When the motion is based on facts that do not appear of record it shall be supported by affidavit or verification by certification pursuant to section 1-109 of the Code of Civil Procedure. Any affidavit shall be sworn to before a person who has authority under the law to administer oaths. Argument not contained in the motion may be made in a supporting memorandum.

If counsel has conferred with opposing counsel and opposing counsel has no objection to the motion, that fact should be stated in the motion in order to allow the court to rule upon the motion without waiting until the time for filing responses has expired.

(b) Filing; Proposed Order; Responses. The motion shall be served, presented, and filed as follows:

(1) The motion, together with proof of service, shall be filed with the clerk. See Rule 11 regarding manner of serving documents and Rule 12 regarding proof of service. Service and filing will be excused only in case of necessity.

(2) A proposed order phrased in the alternative (*e.g.*, "Allowed" or "Denied") shall be submitted with each motion and shall be served upon all counsel of record. No motion shall be accepted by the clerk unless accompanied by such a proposed order.

(3) Responses to a motion shall be in writing and be filed, with proof of service, within 5 days after personal or e-mail service of the motion, or 10 days after mailing of the motion if service is by mail, or 10 days after delivery to a third-party commercial carrier if service is by delivery to a third-party commercial carrier, or within such further time as the court or a judge thereof may allow. Except by order of court, replies to responses will not be allowed and oral arguments on motions will not be heard.

(c) Additional Requirement in Supreme Court.

(1) If a rule provides that relief may be granted "by the court or a justice thereof," the motion shall be directed to only one justice. The clerk shall direct the motion to the justice of the judicial district involved or, in Cook County, to the justice designated to hear motions. The response to a motion shall also be directed to the justice within the time provided in paragraph (b)(3).

(2) If the motion seeks relief that under these rules requires action by the full court, the movant shall file the motion in accordance with paragraph (b)(1). Responses to a motion shall be filed with the clerk within the time provided in paragraph (b)(3) or, if applicable, within the time provided in Rule 381 or 383.

(d) When Acted Upon. Except in extraordinary circumstances, or where opposing counsel has indicated no objections, no motion will be acted upon until the time for filing responses has expired.

(e) Corrections. The clerk is authorized to make corrections in any document of a party to any pending case upon receipt of written request from that party together with proof that a copy of the request has been transmitted to all other parties.

(f) Motions for Extensions of Time. Motions for extensions of time shall be filed on or before the due date of the document the party is seeking an extension of time to file and shall be supported by affidavit or verification by certification under section 1-109 of the Code of Civil Procedure of counsel or the party showing the number of previous extensions granted and the reason for each extension. Any affidavit shall be sworn to before a person who has authority under the law to administer oaths.

(g) Emergency Motions and Bail Motions. Each District of the Appellate Court shall promulgate and publish rules setting forth the procedure for emergency motions, including notice requirements. Subject to the rules of each District, an emergency motion must specify the nature of the emergency and the grounds for the specific relief requested. Except in the most extreme and compelling circumstances, a motion for an extension of time will not be considered an emergency. Motions regarding bail in criminal cases or bonds in civil and criminal cases shall be considered emergency motions if so designated by the movant.

(h) Dispositive Motions.

(1) Dispositive motions in the Appellate Court should be ruled upon promptly after the filing of the objection to the motion, if any. A dispositive motion may be taken with the case where the court cannot resolve the motion without consideration of the full record on appeal and full briefing of the merits.

(2) For purposes of this Rule 361(h), "dispositive motion" means any motion challenging the Appellate Court's jurisdiction or raising any other issue that could result in the dismissal of any portion of an appeal or cross appeal without a decision on the merits of that portion of the appeal or cross-appeal.

(3) A dispositive motion shall include:

(a) a discussion of the facts and issues on appeal sufficient to enable the court to consider the dispositive motion;

(b) a discussion of the facts and law supporting the dismissal of the appeal or cross-appeal or portion thereof prior to a determination of the appeal on the merits;

(c) a discussion of the relationship, if any, of the purported dispositive issue to the other issues on appeal;

(d) an appropriate supporting record containing (i) if the record on appeal has not yet been filed, the parts of the trial court record necessary to support the dispositive motion; and (ii) if necessary, any evidence of relevant matters not of record in accordance with Rule 361(a).

(4) An objection to a dispositive motion shall address each of the required portions of the motion, and if the record on appeal has not yet been filed, shall include any parts of the trial court record not submitted by the movant that is necessary to oppose the motion, and may include evidence of relevant matters not of record in accordance with Rule 361(a).

(5) The Appellate Court may order additional briefing, record submissions, or oral argument as it deems appropriate.

Amended September 29, 1978, effective November 1, 1978; amended July 30, 1979, effective October 15, 1979; amended January 5, 1981, effective February 1, 1981; amended May 28, 1982, effective July 1, 1982; amended June 15, 1982, effective July 1, 1982; amended August 9, 1983, effective October 1, 1983; amended August 30, 1983, effective October 1, 1983; amended February 27, 1987, effective April 1, 1987; amended December 17, 1993, effective February 1, 1994; amended October 1, 1998, effective immediately; amended May 25, 2001, effective immediately; amended October 14, 2005, effective January 1, 2006; amended May 24, 2006, effective September 1, 2006; amended December 29, 2009, effective immediately; amended March 14, 2014, effective immediately; amended Dec 11, 2014, eff. Jan. 1, 2015; amended June 22, 2017, eff. July 1, 2017; amended Nov. 19, 2021, eff. Dec. 1, 2021.

Committee Comments
(January 1, 2006)

Paragraph (h) was added effective January 1, 2006, to address the concerns of the bench and bar with respect to dispositive motions in the Appellate Court. Where a straightforward dispositive issue exists, such as an easily determinable lack of appellate jurisdiction, taking the motion with the case delays the final resolution of the case and greatly increases the burden on all parties by forcing them unnecessarily to brief and argue the merits of the appeal. Paragraph (h) requires that dispositive motions provide the necessary context, including those portions of the record that are necessary to resolve the motion. Where such context is provided, the rule provides that the court should resolve the dispositive motion "promptly after the filing of the objection, if any."

Committee Comments
(Revised May 1982)

Rule 361 replaced former section 86.1 of the Civil Practice Act, former Supreme Court Rule 49, former Rule 3 of the First District Appellate Court, and former Rule 5 of the other districts (earlier Uniform Appellate Court Rule 5). It applies to motions in all reviewing courts. Except for the provisions as to time, the rule made no substantial change in the preexisting practice. The

argument in support of a motion, if not set forth in the motion itself, is to be submitted in a memorandum in support of the motion, rather than in a document entitled "suggestions." The time provisions are designed to insure that the other parties have an opportunity to file objections. The number of copies of documents conforms to former requirements in the Supreme Court and all Appellate Court districts except the First District, which required an original and two copies. The additional copy gives the clerk one for his file. Paragraph (f) was new.

Paragraph (g) was added in 1978, extending to civil cases a requirement formerly appearing in Rule 610(3) (58 Ill. 2d R. 610(3)), applicable only to criminal appeals.

Two clarifying changes were made in 1979. The first sentence of paragraph (a) was added to make it explicit that, unless otherwise provided for, all applications for relief are to be made by motion, and the provisions of former Rule 328, abrogated in 1979, were in substance transferred to paragraph (a) of this rule, where they appear as the third sentence. The "short record" under the former practice is called a "supporting record" in recognition of the fact that such a record serves the sole purpose of supporting the motion and not as a basis for docketing an appeal as the "short record" was under Rule 327 before its amendment in 1979.

In 1981, paragraph (c) was amended to require that copies of motions directed to a justice when the court is not in session must be sent to the other justices at their district chambers whenever the motion seeks relief that will require action by the full court. In 1982, it was amended to clarify this requirement.

Commentary
(December 17, 1993)

The rule has been reorganized and nonsubstantive additions are made. Reference to the former motion call practice of the Supreme Court in the First District has been deleted.

Rule 362. Amendment of Pleadings and Process in the Reviewing Courts.

(a) Application. Any party who seeks on appeal to amend his or her pleadings or the process in the record on appeal shall present a motion, consistent with Rule 361, supported by affidavit. No motion shall be submitted until the record on appeal is on file.

(b) Showing Necessary. The motion and the affidavit in support thereof must show the amendment to be necessary, that no prejudice will result to the adverse party if the amendment sought is permitted, and that the issues sought to be raised by the amendment are supported by the facts in the record on appeal. The amended pleading or process shall be submitted with the motion.

(c) Service. A copy of the motion and affidavit in support thereof must be served upon the other parties and proof of service filed at the time the motion and affidavit are filed.

(d) Objections. The opposing party shall have five days in which to file objections, service of which shall be made upon the movant, and proof of service filed with the clerk of the reviewing court.

(e) Time. No motion for amendment of pleadings or process will be considered if made after the cause has been submitted for decision.

(f) On Court's Own Motion. The reviewing court may, of its own motion, before or after submission of the case for decision, order amendment to be made.

Amended December 17, 1993, effective February 1, 1994; amended June 22, 2017, eff. July 1, 2017.

Committee Comments

This is former Rule 50 without change of substance.

Rule 363. Inspection of Original Exhibits on Appeal

Whenever, in the opinion of the reviewing court, an inspection of an original exhibit not in the record on appeal is important to a correct decision of the appeal, the court may enter an order for its transmission, safekeeping, and return. The clerk of the reviewing court will receive the exhibit and hold it subject to the order.

Amended December 17, 1993, effective February 1, 1994.

Committee Comments

This is former Rule 51, but specifically limited to original *exhibits*; the former language was "original paper."

Commentary
(December 17, 1993)

The rule is changed to reflect that the reviewing court, rather than the trial court, is responsible for securing exhibits the reviewing court may wish to examine on appeal.

Rule 364. Privacy Protection for Documents Filed in Courts of Review.

(a) Applicability.

(1) Any document, including exhibits, containing personal identifiers shall not be filed with a court of review except as provided in paragraph (c).

(2) This rule does not apply to documents in cases filed confidentially or to any document filed under seal.

(b) Personal identifiers, for purposes of this rule, are defined as follows:

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

(2) driver's license and state identification card numbers;

(3) financial account numbers;

(4) debit and credit card numbers; and

(5) for a juvenile or recipient of mental health services involved in a proceeding referenced

in Rule 341(f), the name of the individual.

(c) The filing of a document containing personal identifiers is permissible if redacted to 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 or state identification card number;

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

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

(5) in appeals filed from proceedings referenced in Rule 341(f), rather than redaction, the respective juvenile or recipient of mental health services shall be identified by first name and last initial, except that initials only shall be used when, due to an unusual first name or spelling, using the first name and last initial would create a substantial risk of revealing the individual's identity.

(d) When the filing of personal identifiers is required by law, ordered by the court, or otherwise necessary to effect disposition of a matter, the party filing the document shall file a "Notice of Confidential Information Within Court Filing," prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article III Forms Appendix. Proof of service, as provided by Rule 12, shall be filed with the notice. The notice shall contain the personal identifiers in issue, and shall be filed under seal by the clerk immediately upon filing. Thereafter, the notice and any attachments thereto shall remain under seal and not available for public access, except as the court or a justice thereof may order.

After the notice containing the personal identifier has been filed under seal, subsequent documents filed in the case shall include only redacted personal identifiers and, if necessary, appropriate reference to the sealed document containing the personal identifier.

If any of the personal identifiers in the sealed filing subsequently requires amendment or updating, the responsible party shall file the amended or additional information by filing an amended "Notice of Confidential Information Within Court Filing."

(e) The clerk of the reviewing court is not required to review documents or exhibits for compliance with this rule.

(f) If a document or exhibit is filed containing personal identifiers, a party or any other person whose information has been included may file a motion pursuant to Rule 361 requesting that the court order redaction or the proper designation pursuant to this rule. The motion shall be filed under seal, and the clerk of the reviewing court shall remove the document or exhibit containing the personal identifier from public access pending the court's ruling on the motion. A motion requesting redaction or the proper designation pursuant to this rule shall have attached a copy of the redacted version of the document. If the court or a judge thereof allows the motion, the clerk shall retain the unredacted copy under seal and the redacted copy shall become available for public access.

Adopted Dec. 3, 2015, eff. July 1, 2016; amended June 22, 2017, eff. July 1, 2017.

Rule 365. Appeal to Wrong Court

If a case is appealed to either the Supreme Court or the Appellate Court, or the wrong district of the Appellate Court, which should have been appealed to a different court, the case shall be transferred to the proper court, and the clerk shall transmit the record on appeal and all other documents filed in the case, with the order of transfer, to the clerk of the proper court. That clerk shall file the record and other documents upon receiving them, without charging an additional filing fee, and the case shall then proceed as if it had been appealed to the proper court in the first instance. Any bond executed in such a transferred case is binding on the parties thereto with the same force and effect as if given in a case appealed directly to the court to which the case is transferred.

Amended December 17, 1993, effective February 1, 1994; amended June 22, 2017, eff. July 1, 2017.

Committee Comments

Paragraph (a) is former Rule 28-1(D), which belongs here rather than in the rule relating to direct appeals to the Supreme Court. Paragraph (b) is section 86 of the Civil Practice Act, which covers the same ground as former Rule 47.

Commentary
(December 17, 1993)

Paragraph (a) concerning collateral attack and waiver is deleted because it is an outdated vestige of practice under Illinois' former Constitution.

This rule is expanded to permit limited, intra-district transfers when appeals are docketed in the wrong appellate court district.

Rule 366. Powers of Reviewing Court; Scope of Review and Procedure; Lien of Judgment

(a) Powers. In all appeals the reviewing court may, in its discretion, and on such terms as it deems just,

(1) exercise all or any of the powers of amendment of the trial court;

(2) allow substitution of parties by reason of marriage, death, bankruptcy, assignment, or any other cause, allow new parties to be added or parties to be dropped, or allow parties to be rearranged as appellants or appellees, on such reasonable notice as it may require;

(3) order or permit the record to be amended by correcting errors or by adding matters that should have been included;

(4) draw inferences of fact; and

(5) enter any judgment and make any order that ought to have been given or made, and make any other and further orders and grant any relief, including a remandment, a partial reversal, the order of a partial new trial, the entry of a remittitur, or the enforcement of a

judgment, that the case may require.

(b) Scope of Review

(1) *General*

(i) *Error of Law.* Any error of law affecting the judgment or order appealed from may be brought up for review.

(ii) *Error of Fact.* Any error of fact, in that the judgment or order appealed from is not sustained by the evidence or is against the weight of the evidence, may be brought up for review.

(2) *Scope and Procedure on Review in Jury Cases.* In jury cases the following rules govern:

(i) *Instructions.* No party may raise on appeal the failure to give an instruction unless the party shall have tendered it.

(ii) *Remittitur.* Consenting to a remittitur as a condition to the denial of a new trial does not preclude the consenting party from asserting on appeal that the amount of the verdict was proper. No cross-appeal is required.

(iii) *Post-Trial Motion.* A party may not urge as error on review of the ruling on the party's post-trial motion any point, ground, or relief not specified in the motion.

(iv) *Review of Conditional Rulings on Post-Trial Motion.* The reviewing court, if it determines to reverse an unconditional ruling of the trial court on a post-trial motion, may review and determine any conditional rulings made by the trial court on other questions raised by the motion. No cross-appeal is required.

(3) *Scope and Procedure on Review in Nonjury Cases.* In non-jury cases the following rules govern:

(i) *Special Findings and Motions Unnecessary.* No special findings of fact, certificate of evidence, propositions of law, motion for a finding, or demurrer to the evidence is necessary to support the judgment or as a basis for review. The sufficiency of the evidence to support the judgment is subject to review without formal action to preserve the question.

(ii) *Post-Judgment Motions.* Neither the filing of nor the failure to file a post-judgment motion limits the scope of review.

(iii) *Procedure When Judgment at Close of Plaintiffs Case is Reversed.* If a judgment entered in favor of the defendant pursuant to a motion for a finding or judgment at the close of plaintiff's case is reversed on appeal, the case shall be remanded with directions to proceed as though the motion had been denied by the trial court or waived.

(c) Lien of Judgment. If the reviewing court enters final judgment and orders its enforcement, a certificate or certified copy of the judgment may be filed in the office of the recorder of deeds of any county in which real estate of the judgment debtor is situated and, in case of registered land, a memorial thereof entered upon the register of the last certificate of the title to be affected, and the judgment shall thereupon have the same force and effect as a lien upon the real estate, as if the judgment had been originally rendered by a court in that county.

Amended October 21, 1969, effective January 1, 1970; amended May 28, 1982, effective July 1, 1982; amended December 17, 1993, effective February 1, 1994.

Committee Comments
(Revised July 1, 1971)

As adopted effective January 1, 1967, this rule was former section 92 of the Civil Practice Act, as amended in 1965 (Ill. Rev. Stat. 1965, ch. 110, par. 92), without change of substance. The last sentence of former section 92(3)(b) and section 89 of the Civil Practice Act provided in substance that if in a nonjury law case the Appellate Court found a material fact contrary to the finding of the trial court, the Appellate Court's finding was conclusive on the Supreme Court. The provisions were repealed by the General Assembly in 1965 because they were in conflict with the broad appellate powers conferred on the Supreme Court by the judicial article. Laws of 1965, p. 2543, §§1, 2.

Paragraph (b)

Subparagraph (1) was paragraph (b) in the 1967 revision. The words "in any civil case" were deleted from new paragraph (i) in 1969 as unnecessary.

Subparagraphs (2) and (3) were added in 1969. They are taken from the provisions in the Civil Practice Act on scope of review and related procedure in jury and nonjury cases, mentioned below.

Subparagraphs (2)(i), (ii) and (iii) are taken from sections 67(3), 68.1(7), and 68.1(2) of the Civil Practice Act (Ill. Rev. Stat. 1969, ch. 110, pars. 67(3), 68.1(7), and 68.1(2)), respectively, without change of substance. Subparagraph 2(iv) is based on section 68.1(6) of the Act.

Subparagraph (2)(v) is new. It abrogates the ruling in *Keen v. Davis*, 108 Ill. App. 2d 55, 63-64 (5th Dist. 1969), denying reviewability, on the appeal from an order allowing a new trial, of questions raised by other rulings of the trial court on the post-trial motion. Once the appeal is allowed, the whole case is before the reviewing court, and efficient judicial administration is advanced by disposing of all questions presented by the record. See also Rule 306(a)(2).

Subparagraph (3)(i) combines paragraphs (3) and (4) of section 64 of the Civil Practice Act (Ill. Rev. Stat. 1967, ch. 110, pars. 64(3), (4)) without change in substance.

Subparagraphs (3)(ii) and (iii) are, respectively, the last sentence of section 68.3(1) and the last sentence of section 64(5) of the Civil Practice Act (Ill. Rev. Stat. 1969, ch. 110, pars. 68.3(1), 64(5)) without change of substance.

Commentary
(December 17, 1993)

Paragraph (b)(2)(v) is deleted because Rule 306 contains a substantively identical provision.

Rule 367. Rehearing in Reviewing Court

(a) Time; Length. A petition for rehearing may be filed within 21 days after the filing of the

judgment, unless on motion the time is shortened or enlarged by the court or a judge thereof. Motions to extend the time for petitioning for rehearing are not favored and will be allowed only in the most extreme and compelling circumstances. Unless authorized by the court or a judge thereof, the petition shall be limited to 27 pages or, alternatively, 8,100 words, and in either case be supported by a certificate of compliance in accordance with Rule 341(c).

(b) Contents. The petition shall state briefly the points claimed to have been overlooked or misapprehended by the court, with proper reference to the particular portion of the record and brief relied upon, and with authorities and argument, concisely stated in support of the points. Reargument of the case shall not be made in the petition.

(c) Form and Service. For the petition and any answer or reply (see paragraph (d)), the form, cover, and service shall conform to the requirements for briefs (see Rule 341), including the submission of duplicate paper copies, if required.

(d) Answer; Reply; Oral Argument. No answer to a petition for rehearing will be received unless requested by the court or unless the petition is granted. No substantive change in the relief granted or denied by the reviewing court may be made on denial of rehearing unless an answer has been requested. If the petition is granted or if an answer is requested, the opposing party shall have 21 days from the request or the granting of the rehearing to answer the petition, and petitioner shall have 14 days after the due date of the answer within which to file a reply. Unless authorized by the court or a judge thereof, the answer shall be limited to 27 pages or, alternatively, 8,100 words, the reply shall be limited to 10 pages or, alternatively, 3,000 words, and each must be supported by a certificate of compliance in accordance with Rule 341(c). The petition shall be served on opposing counsel and proof of service filed with the clerk. The briefs of the parties, the petition for rehearing, the answer, and the reply shall stand as briefs on the rehearing. Oral argument will be permitted only if ordered by the court on its own motion.

(e) Limitation on Petitions in Appellate Court. When the Appellate Court has acted upon a petition for rehearing and entered judgment on rehearing no further petitions for rehearing shall be filed in that court.

Amended October 1, 1976, effective November 15, 1976; amended February 19, 1982, effective April 1, 1982; amended April 10, 1987; amended June 12, 1987, effective August 1, 1987; amended December 17, 1993, effective February 1, 1994; amended October 14, 2005, effective January 1, 2006; amended May 24, 2006, effective September 1, 2006; amended December 29, 2009, effective immediately; amended Dec. 11, 2014, eff. Jan. 1, 2015; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended Mar. 8, 2016, eff. immediately; amended Aug. 15, 2016, eff. immediately; amended June 22, 2017, eff. July 1, 2017; amended Sept. 15, 2017, eff. Nov. 1, 2017.

Commentary
(December 17, 1993)

The rule is modified to reflect that all types of reviewing court dispositions are subject to the rehearing procedures and time limits (see *Woodson v. Chicago Board of Education* (1993), 154 Ill. 2d 391).

Committee Comments
(Revised February 1982)

This rule is based upon former Rule 44.

Paragraph (a)

As adopted in 1967, paragraph (a) changed the time limit provided in former Rule 44 to 21 days in accordance with the general principle that time periods should be multiples of seven days. The flat prohibition against extensions of time appearing in former Rule 44 was removed in favor of a statement that extensions were not favored. In 1976, the paragraph was amended to strengthen the language disfavoring extensions of time.

(Paragraph (b)

This paragraph is the second and third sentences of former Rule 41(1) without change of substance.

Paragraph (c)

This paragraph was derived from a part of the first sentence of former Rule 44(1) and the third sentence of paragraph (2) of that rule. There was no change of substance until 1982, when the rule was reworded to specifically require that the parties furnish the Reporter of Decisions a copy of any rehearing petition or any motion seeking to change the time for filing a rehearing petition.

Paragraph (d)

This paragraph is based primarily upon former Rule 44(3). It does not change the preexisting practice.

Paragraph (e)

This new provision is applicable only to the Appellate Court. When that court has twice considered a case, once initially and a second time on rehearing, there would seem to be no need for further consideration, especially when there is a higher court from which relief can be sought. See Rules 315(b), 316, and 317 as to the date from which the time for seeking Supreme Court review begins to run.

Rule 368. Issuance, Stay, and Recall of Mandates from Reviewing Court

(a) Issuance; Stay on Petition for Rehearing. The clerk of the reviewing court shall transmit to the circuit court the mandate of the reviewing court, with notice to the parties, not earlier than 35 days after the entry of judgment unless the court orders otherwise. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the

court. If the petition is denied, the mandate shall issue not earlier than 35 days after entry of the order denying the petition unless the court upon motion orders the time shortened or enlarged. The filing of a corrected opinion where no petition for rehearing has been filed does not extend the time for transmission of the mandate.

(b) Stay When Review by Supreme Court Is Sought. In cases in which an injunction has been modified or set aside by the Appellate Court, that court's mandate may be stayed only upon order of that court, the Supreme Court or a judge of either court. In all other cases, the mandate is stayed automatically if, before it may issue, a party who is entitled to seek review by the Supreme Court files a petition in the Supreme Court for such review. The stay is effective until the expiration of the time to seek review, and, if review is timely sought, until disposition of the case by the Supreme Court. The Supreme Court, the Appellate Court, or a judge of either court may, upon motion, order otherwise or stay the mandate upon just terms.

(**c) Stay or Recall by Order.** The Appellate Court, the Supreme Court, or a judge of either court may, upon just terms, stay the issuance of or recall any mandate of the Appellate Court until the time for seeking review by the Supreme Court expires, or if review is timely sought, until it is granted or refused, or if review is granted, until final disposition of the case by the Supreme Court. The stay may apply to any judgment entered or standing affirmed in any court pursuant to the mandate of the Appellate Court. In cases in which review by the Supreme Court of the United States may be sought, the court whose decision is sought to be reviewed or a judge thereof, and in any event the Supreme Court of Illinois or a judge thereof, may stay or recall the mandate, as may be appropriate.

Amended December 17, 1993, effective February 1, 1994; amended February 10, 2006, effective July 1, 2006; amended Sept. 30, 2020, eff. Oct. 1, 2020.

Committee Comments

This rule is principally derived from section 82(4) of the Civil Practice Act and former Supreme Court Rule 45, Rule 10 of the First Appellate District, and Rule 16 of the other appellate districts (earlier Uniform Appellate Court Rule 16). The rule is made the same for the supreme and appellate courts.

Paragraph (a)

Paragraph (a) enlarges the minimum time for issuance of a mandate from 15 to 21 days, but reduces the time after denial of rehearing from 10 to 7 days in the Appellate Court and, in the Supreme Court, from the period until the end of the term, or 15 days if the denial was during vacation, to 7 days. There is no good reason for delay after rehearing is denied. Issuance of the mandate in the Supreme Court is no longer tied in to the close of the term of court. The mandate is to be issued automatically by the clerk of the reviewing court.

Paragraph (b)

Paragraph (b) removes from the automatic stay provision of the superseded Appellate Court rules (Rule 10 of the First District, Rule 16 of the other districts) cases in which the Appellate Court sets aside or modifies an injunction. The committee believes that in view of the nature and gravity of injunctive relief it is wrong to provide for the automatic continuance of an injunction that presumptively was erroneously issued, in whole or in part, and that such an injunction should be continued in effect only if one of the reviewing courts or a judge thereof determines that it should be.

The provision of the former rules for an automatic stay in other cases (unless the Supreme or Appellate Court or a judge of either otherwise orders) is retained. The affidavit filed to obtain the automatic stay may be that of the party or his attorney, and need not be executed by both as under the former rules.

Paragraph (c)

Paragraph (c) simplifies section 82(4) of the Civil Practice Act to make it clear that the Supreme Court, the Appellate Court, or a judge of either, when appropriate, has discretion to grant a stay upon just terms until final disposition of the case, whether by the Illinois Supreme Court or the Supreme Court of the United States.

Rule 369. Filing of Mandate in Circuit Court and Proceedings Thereafter

(a) Filing of Mandate. The clerk of the circuit court shall file the mandate promptly upon receiving it.

(b) Dismissal or Affirmance. When the reviewing court dismisses the appeal or affirms the judgment and the mandate is filed in the circuit court, enforcement of the judgment may be had and other proceedings may be conducted as if no appeal had been taken.

(c) Remandment. When the reviewing court remands the case for a new trial or hearing and the mandate is filed in the circuit court, the case shall be reinstated therein upon 10 days' notice to the adverse party.

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

Committee Comments

This rule is a revision of and supersedes section 88 of the Civil Practice Act. Change here has been made in light of the provision in Rule 368 for automatic issuance of the mandate.

Rule 370. Process in Reviewing Court

(a) Form. The form of process in reviewing courts shall be, as near as may be, similar to process issued by the circuit court and may be prescribed by administrative orders of the reviewing courts.

(b) Execution and Return. Process in reviewing courts shall be executed and returned in the same manner as process in the circuit court is executed and returned unless the court orders otherwise.

Committee Comments

This rule is a revision of section 91 of the Civil Practice Act and former Rule 2(5). The provision for the prescribing of the form of process by administrative orders of the reviewing courts is new, but should result in no change in practice.

Rule 371. Confidential Records When On Review

Cases and documents within a case identified as impounded, sealed, secured or otherwise confidential in the circuit court shall remain as such when filed in the reviewing courts, and the parties of record shall have the same level of access, if any. This Rule does not apply to an opinion or Rule 23 order disposing of an appeal, or to a supervisory order affecting the validity of an opinion or Rule 23 order.

Adopted Dec. 19, 2019, eff. Jan. 1, 2020; amended June 11, 2021, eff. immediately.

Rule 372. Removing Records from Reviewing Court

(a) Work on Appeal. Prior to the due date of the reply brief, any party to the appeal may, for the purpose of work on the appeal, request, in writing, the clerk of the reviewing court to transmit any paper or physical components of the record on appeal to the clerk of the trial court or to the party's attorney. The clerk shall comply with the request, without the necessity of obtaining an order of court, by sending the paper or physical components of the record to the clerk of the trial court or the attorney, charges collect. Upon receiving the paper or physical components of the record on appeal, the clerk of the trial court or the attorney is responsible for its safekeeping and shall return the record components to the clerk of the reviewing court by prepaid mail or express not later than the day upon which the reply brief is due. The parties may unbind any paper components of the record for the purpose of photocopying, but the party responsible for unbinding the record must restore it to its original condition.

(b) Other. Except as otherwise provided in this rule, no paper or physical components of the record shall be taken from the files of the reviewing court except on leave granted by the court, or a judge thereof. The clerk shall report promptly to the Court every violation of this rule.

Amended January 5, 1981, effective February 1, 1981; amended December 17, 1993, effective February 1, 1994; amended June 22, 2017, eff. July 1, 2017.

Committee Comments

(Revised January 5, 1981)

This is substantially former Supreme Court Rule 54 and Rule 20 of the Second, Third, Fourth and Fifth Appellate Court Districts, made applicable to all reviewing courts. A change permits the clerk to transmit the record directly to the attorney who will be using it, and not merely to the clerk of the trial court, who would then in normal course let the attorney have it. For many years prior to the adoption of this rule the clerk of the Appellate Court for the First District was authorized to permit temporary withdrawal of the record by attorneys who needed to use it in preparing their briefs and abstracts. The bar did not abuse this privilege.

With the elimination of "excerpts from record" in 1979, paragraph (a) of Rule 372 was amended in 1981 to substitute the due date of the reply brief for the due date of the excerpts from record as a base for the time limit imposed on requests under the paragraph. Since under the prior practice both the reply brief and the excerpts from record were due 14 days after the due date of the appellee's brief, the 1981 amendment does not effect a change in the practice.

Rule 373. Date of Filing in Reviewing Court.

Unless received after the due date, the time of filing records, briefs or other documents required to be filed within a specified time will be the date on which they are actually received by the clerk of the reviewing court. If received after the due date, the time of mailing by an incarcerated, self-represented litigant shall be deemed the time of filing. Proof of mailing shall be as provided in Rule 12. This rule also applies to a motion directed against the judgment and to the notice of appeal filed in the trial court.

Amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended December 17, 1993, effective February 1, 1994; amended December 29, 2009, effective immediately; amended September 19, 2014, eff. immediately; amended Oct. 6, 2016, eff. Nov. 1, 2016; amended June 22, 2017, eff. July 1, 2017.

Committee Comments
(Revised July 1, 1985)

Rule 373 was new in 1967. It was designed to make it unnecessary for counsel to make sure that briefs and other papers mailed before the filing date actually reach the reviewing court within the time limit. Receipt of the paper in the clerk's office a day or two later will not delay the appeal. As originally adopted the rule provided that the time of mailing might be evidenced by the post mark affixed by a United States Post Office. Because of problems with the legibility of post marks, and delay in affixing them in some cases, the rule was amended in 1981 to provide for the use of affidavits of mailing or United States Postal Service certificates of mailing.

The 1985 amendment regarding the recording of a filing date was intended to simplify record keeping in the appellate and supreme courts.

Commentary

(December 17, 1993)

The rule is revised to make the method of proof of mailing consistent with practice under Rule 12.

Reference to the notice of appeal coming within the scope of the rule is a reflection of existing law (see *Harrisburg-Raleigh Airport Authority v. Department of Revenue* (1989), 126 Ill. 2d 326).

Committee Comments
(December 29, 2009)

The rules on service and filing have been revised to provide for sending documents via third-party commercial carrier. Under these rules, the term "delivery" refers to all the carrier's standard pick-up methods, such as dropping a package in a UPS or FedEx box or with a UPS or FedEx contractor.

Rule 374. Costs in the Reviewing Courts.

(a) Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or excused by the court for good cause shown; if a judgment is affirmed, costs shall be taxed against the appellant unless excused by the court for good cause shown; if a judgment is reversed, costs shall be taxed against the appellee unless excused by the court for good cause shown; if a judgment is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the court.

(b) The following costs are taxable:

(1) filing fees paid to the clerk of the reviewing court;

(2) appearance fees in the reviewing court;

(3) the fee paid to the clerk of the trial court (but not to court reporter) for preparing the record for appeal; and

(4) the actual and reasonable cost of printing or otherwise producing duplicate paper copies of documents authorized by these rules (the cost of including unnecessary matters or arguments may be disallowed as costs).

(c) An appellant or an appellee, as the case may be, who desires costs to be taxed, shall state them in an itemized and verified bill of costs which should be filed with the clerk of the reviewing court, with proof of service, within 14 days after rehearing is denied or barred. Any objections to the bill of costs must be filed within 10 days after service of the bill of costs, unless the time is extended by the court. If objections are filed to the bill of costs, the clerk of the reviewing court will refer said bill and objections to the court for disposition. If no objections are filed to the bill of costs, the clerk of the reviewing court shall tax the costs.

(d) Costs pursuant to this rule shall not be taxed against any public, municipal, governmental, or quasi-municipal corporation, or against any public officer in that person's official capacity for the benefit of the public.

Adopted February 19, 1982, effective April 1, 1982; amended December 17, 1993, effective February 1, 1994; amended June 22, 2017, eff. July 1, 2017.

Rule 375. Failure to Comply With Rules; Frivolous Appeals−Sanctions

(a) Failure to Comply With Appeals Rules. If after reasonable notice and an opportunity to respond, a party or an attorney for a party or parties is determined to have wilfully failed to comply with the appeal rules, appropriate sanctions may be imposed upon such a party or attorney for the failure to comply with these rules. Appropriate sanctions for violations of this section may include an order that a party be barred from presenting a claim or defense relating to any issue to which refusal or failure to comply with the rules relates, or that judgment be entered on that issue as to the other party, or that a dismissal of a party's appeal as to that issue be entered, or that any portion of a party's brief relating to that issue be stricken. Additionally, sanctions involving an order to pay a fine, where appropriate, may also be ordered against any party or attorney for a party or parties.

(b) Appeal or Other Action Not Taken in Good Faith; Frivolous Appeals or Other Actions. If, after consideration of an appeal or other action pursued in a reviewing court, it is determined that the appeal or other action itself is frivolous, or that an appeal or other action was not taken in good faith, for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or the manner of prosecuting or defending the appeal or other action is for such purpose, an appropriate sanction may be imposed upon any party or the attorney or attorneys of the party or parties. An appeal or other action will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. An appeal or other action will be deemed to have been taken or prosecuted for an improper purpose where the primary purpose of the appeal or other action is to delay, harass, or cause needless expense.

Appropriate sanctions for violation of this section may include an order to pay to the other party or parties damages, the reasonable costs of the appeal or other action, and any other expenses necessarily incurred by the filing of the appeal or other action, including reasonable attorney fees.

A reviewing court may impose a sanction upon a party or an attorney for a party upon the motion of another party or parties, or on the reviewing court's own initiative where the court deems it appropriate. If the reviewing court initiates the sanction, it shall require the party or attorney, or both, to show cause why such a sanction should not be imposed before imposing the sanction. Where a sanction is imposed, the reviewing court will set forth the reasons and basis for the sanction in its opinion or in a separate written order.

Adopted June 19, 1989, effective August 1, 1989; amended December 17, 1993, effective February 1, 1994.

Committee Comments
(August 1, 1989)

Paragraph (a) is intended to cover those situations where a party or his attorney or both fail to comply with the appeals rules. The sanctions under this paragraph are intended to apply in those circumstances where the party or attorney wilfully fails to comply with the rules. No sanction is intended to be imposed under this paragraph for an inadvertent violation of the appeals rules. No formal hearing process is envisioned before a sanction will be imposed; rather, any sanction imposed will be by a procedure summary in nature and will not involve the formalities required in procedures for citations of contempt of court. (See *People v. Waldron* (1986), 114 Ill. 2d 295.) However, the sanctions imposed under this paragraph are only those that would be typically inherently available to a reviewing court in enforcing its rules, and the imposition of small fines similar to those imposed for petty offenses. (See old section of Title 18 of the United States Code, Crimes & Criminal Procedure, 18 U.S.C. §1 (1982) (repealed October 30, 1984); Pub. L. 98-596, §8, 98 Stat. 3138 (1984); see also Ill. Rev. Stat. 1987, ch. 38, par. 1005-5-1; Ill. Rev. Stat. 1987, ch. 24, pars. 1-2-1, 1-2-1.1.) Furthermore, before any sanction is imposed, a party and/or attorney will receive notice of the violation and a reasonable opportunity to correct it.

Paragraph (b) is derived from the current appellate Rule 38 of the Federal Rules of Appellate Procedure, section 1912 of the Judicial Code (28 U.S.C. §1912) and section 1927 of the Judicial Code (28 U.S.C. §1927). It is also similar to the requirements set forth in Rule 7-102 of the Illinois Code of Professional Responsibility and Rule 3.1 of the ABA Model Rules of Professional Conduct, and adopts a modified version of Federal Rule 11. Moreover, appeals courts have been recognized to have inherent authority to impose sanctions for taking a frivolous appeal or for abusive tactics in the conduct of the appeal. See *Roadway Express Inc. v. Piper* (1980), 447 U.S. 752, 65 L. Ed. 2d 488, 100 S. Ct. 2455.

However, this paragraph relates not only to frivolous appeals, *i.e.*, those without merit and no chance of success, but also to appeals which are conducted in a frivolous manner, *i.e.*, those whose primary purpose is to delay enforcement of the judgment, to cause a party to incur unnecessary expense, or which are generally prosecuted in bad faith. The determination that the appeal is frivolous or the conduct is improper is based on an objective standard of conduct, *viz.*, an appeal will be found to be frivolous if a reasonable prudent attorney would not in good faith have brought such an appeal, or the appeal conduct will be found to be improper if a reasonable prudent attorney would not have engaged in such conduct. If an appeal is found to be frivolous, or the conduct improper, the subjective nature of the conduct is then important to determine the appropriate nature and amount of the sanction. A party or attorney will be given notice before any sanction is imposed, either by the motion of an aggrieved party or by a rule to show cause issued by the court. A party or attorney who is a subject of a proposed sanction where the proposed sanction is initiated by the court is entitled to respond before any sanction is imposed. If a sanction is imposed, as noted, the court in its opinion or in a separate written order will provide a statement of reasons or basis for the imposed sanction.

Under paragraph (b), a penal fine may be imposed if the conduct in a particular case also constitutes a violation of the civil appeals rules as set forth in paragraph (a) above.

(December 17, 1993)

The rule has been modified to make clear that any action pursued in the reviewing court is subject to sanctions if the conduct constitutes a violation of the rule.

Rules 376-80. Reserved

Part G. Original Actions in Supreme Court

Rule 381. Original Actions in the Supreme Court Pursuant to Article VI, Section 4(a), of the Constitution

(a) Motion for Leave to File; Only Issues of Law Considered. Proceedings in the supreme court in original actions in cases relating to revenue, *mandamus*, prohibition, or *habeas corpus*, and as may be necessary to the complete determination of any case on review, shall be instituted by filing a motion, supported by explanatory suggestions, for leave to file a complaint seeking appropriate relief. Only issues of law will be considered. The proposed complaint shall be sworn to and shall contain or have attached to it the lower court records or other pertinent material that will fully present the issues of law.

(b) Service of Process. The motion, together with the proposed complaint, shall be served upon the other party or parties, including the nominal party or parties, and proof of service shall be filed at the time the motion is filed.

(c) Judge a Nominal Party. In an original action to review a judge's judicial act the judge is a nominal party, only, in the proceeding, and need not respond to the motion or complaint unless instructed to do so by the court. The judge's failure to do so will not admit any allegation. Counsel for the prevailing party may file any appropriate documents for that party but shall not file any document in the name of the judge.

(d) Objections to Motion. The respondent shall have 7 days after personal or e-mail service of the motion, or 14 days after mailing of the motion if service is by mail, or 14 days after delivery to a third-party commercial carrier if service is by delivery to a third-party commercial carrier, or within such further time as the court or a judge thereof may allow to file any objections to the motion, and service shall be made upon the movant and proof of service filed with the clerk of the court. Oral argument on the motion shall be permitted as the court may allow.

(e) Briefs. If the motion is allowed, briefs conforming to the requirements of Rules 341 through 344 shall be filed in support of the pleadings, within the time fixed by the court on motion of any party or on its own motion. On notice to the court and the other party or parties, the plaintiff or defendant may allow the original filing to stand as the brief without order of court.

Amended effective May 27, 1969, and July 1, 1971; amended January 5, 1981, effective February 1, 1981; amended February 19, 1982, effective April 1, 1982; amended February 27, 1987, effective April 1, 1987; amended December 17, 1993, effective February 1, 1994; amended March 1, 2001, effective immediately; amended December 29, 2009, effective immediately; amended March 14, 2014, effective

immediately; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended June 22, 2017, eff. July 1, 2017.

Committee Comments
(Revised January 5, 1981)

Paragraphs (a), (b) and (c)

Prior to the adoption of the Constitution of 1970, the original-jurisdiction rule necessarily was concerned with the only original-jurisdiction cases authorized by the Constitution of 1870, which were limited to actions relating to revenue, mandamus, prohibition and habeas corpus. The new constitution vests original and exclusive jurisdiction in the Supreme Court in other classes of cases in which factual issues might arise. Rule 381 would be inappropriate for such cases. Paragraph (a) has, therefore, been modified to limit Rule 381 to the traditional original actions to which it has previously applied, which are now covered by article VI, section 4(a), of the 1970 Constitution. A new Rule 382 provides for cases arising by virtue of the new mandatory exclusive original jurisdiction vested in the Supreme Court by articles IV and V of the 1970 Constitution.

The procedure in original actions was unchanged in substance by this rule, as adopted effective January 1, 1967, though it is spelled out in more detail than it was in former Rule 46, which governed until that date. Effective January 1, 1964, the paragraph of the former rule requiring original proceedings relating to the revenue to be brought at least 20 days before the first day of the term, unless the cause is continued, was deleted as unnecessary. Matters relating to the closing of the issues, the briefing schedule, and the holding of an oral argument are left to the discretion of the Supreme Court.

Paragraph (a) was amended in 1981 to add the penultimate sentence, requiring that when the motion is filed when the court is not in session, a copy shall be sent to each of the justices at his district chambers. See the committee comments to Rule 361(c).

Paragraph (d)

Paragraph (d) was added to Rule 381 in May, 1969, to protect the judge whose action is being reviewed from becoming personally involved as a party in litigation in which his role is solely judicial. The amendment makes it unnecessary for the judge to choose between the alternatives of retaining counsel of his own or being represented by counsel for the successful party. “A judge will thus be guarded from engaging in ex parte discussions with counsel or aligning himself even temporarily with one side in pending litigation.” *Rapp v. Van Densen* (3d Cir. 1965), 350 F.2d 806, 813. See also *General Tire & Rubber Co. v. Watkins* (4th Cir. 1966), 363 F.2d 87, 89. See also Rule 21 of the Federal Rules of Appellate Procedure.

Rule 382. Original Actions in the Supreme Court Pursuant to Article IV, Section 3, and Article V, Section 6(d), of the Constitution

(a) Institution of proceedings. Proceedings in the Supreme Court when the court has original and exclusive jurisdiction under article IV, section 3, and article V, section 6(d), of the

Constitution, which relate to redistricting of the General Assembly and to the ability of the Governor to serve or resume office, shall be instituted by filing a motion for leave to file a complaint, which motion shall be accompanied by the complaint and a brief in support of the motion. The complaint may be supported by affidavits or other pertinent documents.

(b) Subsequent Procedure. Thereafter the case shall proceed in the manner ordered by the court. Whenever appropriate, and subject to order of the court, the rules governing cases in the circuit court shall serve as a guide to the procedure to be followed. The court may dispose of the case on the documents filed or may order further briefing or may order oral argument on the motion for leave to file or on the complaint or on the pleadings or on the pleadings supplemented by pertinent documentary evidence, or may call for additional evidence and for briefs and argument after such evidence has been received. If the court determines that disputed issues of material fact must be resolved on the basis of oral testimony, it may appoint a judge or retired judge of any Illinois court to take testimony and to report his findings of fact and recommendations to the Supreme Court.

(c) Briefs, Pleadings, and Other Documents. Briefs, pleadings, and other documents filed with the Supreme Court in cases covered by this rule shall, to the extent appropriate, conform to Rules 341 through 344.

Effective July 1, 1971; amended December 17, 1993, effective February 1, 1994; amended June 22, 2017, eff. July 1, 2017.

Committee Comments
(July 1, 1971)

This rule is based in part upon Rule 381 and in part upon Rule 9 of the United States Supreme Court Rules and the practice thereunder, which enables that court to deal with original cases involving factual issues requiring the taking of evidence. The object is to give the court complete flexibility as to the procedure to be followed, depending upon the circumstances of the particular case. The procedures most likely to be employed, which have been employed by the United States Supreme Court, are specifically described because of the unfamiliarity of some of such procedures in prior Illinois practice.

The defendant need take no action until the Supreme Court indicates what is appropriate. If the court deems the complaint obviously insufficient on its face, it may dispose of the case without calling the defendant to do anything. It may request the defendant to file either an answer to the complaint or a brief, in part depending on whether factual issues are presented. Because of the constitutional prohibition against "fee officers in the judicial system" (art. VI, §14), the evidence must be taken by an active or retired judge, who will be already receiving a State salary, rather than by a master.

Rule 383. Motions for Supervisory Orders

(a) A motion requesting the exercise of the Supreme Court's supervisory authority shall be

supported by explanatory suggestions and shall contain or have attached to it the lower court records or other pertinent material that will fully present the issues, authenticated as required by Rule 328.

(b) The motion, explanatory suggestions, and all supporting documents must be served upon the other parties, including the nominal party or parties, and proof of service filed at the time the motion is filed.

(c) A person whose act is the subject of this proceeding shall be designated as a respondent. A respondent need not respond to the motion unless instructed to do so by the court, and failure to respond will not admit any of the allegations contained in the motion. The prevailing party or parties below shall file appropriate documents for that respondent but shall not file any document in the name of the respondent.

(d) The prevailing party below shall have 7 days after personal or e-mail service of the motion, or 14 days after mailing of the motion if service is by mail, or 14 days after delivery of the motion to a third-party commercial carrier if service is by delivery to a third-party commercial carrier, or within such further time as the court or a judge thereof may allow, to file any objections to the motion, and service shall be made upon the movant and proof of service filed with the clerk of the court.

(e) Illegible documents shall not be filed.

(f) Oral argument shall be permitted only if requested by the court.

Adopted August 9, 1983, effective October 1, 1983; amended February 27, 1987, effective April 1, 1987; amended December 17, 1993, effective February 1, 1994; amended March 1, 2001, effective immediately; amended December 29, 2009, effective immediately; amended February 10, 2014, effective immediately; amended March 14, 2014, effective immediately; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended June 22, 2017, eff. July 1, 2017.

Committee Comments

This procedure is intended to discourage a practice which has developed since 1971 by which parties petition for leave to file a petition for *mandamus* or, *in the alternative*, for a supervisory order, in cases in which *mandamus* would be an inappropriate remedy.

Rule 384. Proceedings for the Transfer and Consolidation of Multicircuit Actions.

(a) Motion to Consolidate—Transfer. When civil actions involving one or more common questions of fact or law are pending in different judicial circuits, and the Supreme Court determines that consolidation would serve the convenience of the parties and witnesses and would promote the just and efficient conduct of such actions, the Supreme Court may, on its own motion or on the motion of any party filed with the Supreme Court, transfer all such actions to one judicial circuit for consolidated pretrial, trial, or post-trial proceedings.

(b) Pretrial Consolidation—Remandment. Unless the action is terminated or unless otherwise ordered by the Supreme Court, an action transferred for pretrial proceedings only shall,

at or before the conclusion of those pretrial proceedings, be remanded to the circuit from which it was transferred. However, the Supreme Court may, on its own initiative or at the request of the transferee circuit court, separate any claim, cross-claim, counterclaim or third-party claim and remand such claims at any time.

(c) Procedure.

(1) *General*. Except as otherwise provided hereafter, procedures for processing motions for consolidation filed under this rule shall, to the extent feasible, follow the procedures set forth in Rule 383, "Motions for Supervisory Orders."

(2) *Notice to Clerks*. A party filing a motion to consolidate shall file such motion with the clerk of the circuit court of each circuit in which the actions to be consolidated are pending, and shall include an appendix to such motion specifying the county in which each such case is pending and the names and file numbers of all cases to be consolidated.

(3) *Notice to Parties*. Service on other parties shall be as provided in Rule 383(b).

(4) *Oral Argument*. If the Supreme Court requests oral argument on the motion to consolidate, the clerk of the Supreme Court shall so notify the clerk of each affected circuit court and the attorney(s) for each affected party.

(5) *Procedures−Orders to Consolidate*. If the Supreme Court grants a motion to consolidate or if the Supreme Court initiates a consolidation of cases at the circuit court level, the clerk of the Supreme Court shall transmit the court's order to the clerk of each affected circuit court and to the attorney(s) for each affected party. The clerks of the circuit courts from which a transfer is ordered shall promptly certify and transfer to the clerk of the circuit court to which the transfer is ordered all documents in the affected cases and in this and all other respects the cases shall be treated as if there had been an intrastate transfer on the grounds of *forum non conveniens*. See Rule 187(c).

Adopted Oct. 25, 1990, eff. Nov. 1, 1990; amended June 22, 2017, eff. July 1, 2017.

Committee Comments

This rule is new and is based upon Title 28, section 1407, of the United States Code, which establishes the procedure in the Federal courts for the transfer of civil actions involving one or more common questions of fact, pending in different districts, to one district for coordination or consolidated pretrial proceedings. This new rule provides for similar procedures in Illinois for the transfer of related cases pending in different judicial circuits within the State. The rule, however, not only covers cases involving common questions of fact, but includes cases which involve common questions of law as well. Additionally, this rule, unlike 28 U.S.C. §1407, also provides for the transfer of the related cases, where appropriate, for trial or post-trial proceedings and not just for transfers for pretrial proceedings.

Another major departure from the Federal procedures set forth in section 1407 is that transfers in Illinois will be made by the supreme court and not a judicial panel. This was considered required

by the Illinois Constitution (Ill. Const. 1970, art. VI, §4) and is more consistent with current Illinois practice. In an attempt to adhere to current Illinois practice, the rule provides that, to the extent feasible, motions processed under the new rule shall follow the procedures set forth in Rule 383, "Motions for Supervisory Orders." Further, where a transfer is ordered by the supreme court the clerks of the courts affected shall treat the case as if there had been an intrastate transfer on the grounds of *forum non conveniens* under Rule 187(c).

Section (c)(2) is new and does not have a counterpart in Rule 383. Section (c)(2) requires a party filing a motion to consolidate to also file a copy of the motion and an appendix specifying the county in which each case is pending and the names and file numbers of all the cases consolidated, with the clerk of the circuit court, where the asserted related actions are pending. Also, in section (c)(4), this rule specifically directs the clerk of the supreme court to notify the clerks of the affected circuits and the parties if the supreme court requests oral argument. This is also the case under section (c)(5) of the rule where the supreme court grants a motion to consolidate, the supreme court clerk again is directed to notify the affected circuit court clerks and the parties.

Rules 385-400. Reserved

Article IV. Rules on Criminal Proceedings in the Trial Court

Part A. Waivers and Pleas

Rule 401. Waiver of Counsel

(a) Waiver of Counsel. Any waiver of counsel shall be in open court. The court shall not permit a waiver of counsel by a person accused of an offense punishable by imprisonment without first, by addressing the defendant personally in open court, informing him of and determining that he understands the following:

(1) the nature of the charge;

(2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and

(3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court.

(b) Transcript. The proceedings required by this rule to be in open court shall be taken verbatim, and upon order of the trial court transcribed, filed and made a part of the common law record.

Amended June 26, 1970, effective September 1, 1970; amended effective September 1, 1974; amended September 29, 1978, effective November 1, 1978; amended April 27, 1984, effective July 1, 1984.

Committee Comments([1])

(Revised April 27, 1984)

Rule 401, as adopted in 1967 (36 Ill. 2d R. 401), covered (1) waiver of indictment, (2) waiver of counsel, (3) pleas of guilty, and (4) the requirement of representation by counsel in open court on a guilty plea or waiver of counsel or waiver of indictment by persons under 18 years of age. In 1970, items (3) and (4) were transferred to Rules 402 and 403 respectively (43 Ill. 2d Rules 402, 403), and waiver of counsel and waiver of indictment were separated into separate lettered paragraphs (a) and (b), respectively (43 Ill. 2d R. 401(a), (b)), in order to give a clearer and more specific statement of the requirements for each type of waiver, since in a given case both waivers might not occur, or might occur at different times. In 1975, the Code of Criminal Procedure of 1963 was amended to abolish the requirement of indictment, and in 1978, to reflect this change, paragraph (b) of Rule 401 (58 Ill. 2d R. 401) was rescinded and former paragraph (c) became the present paragraph (b).

With regard to waiver of counsel, the 1970 amendments made no major change in substance, although they made explicit some requirements that were only implicit in the rule as originally adopted. For example, Rule 401 as originally adopted merely stated that the defendant must understand "the consequences [of the charges against him] if found guilty" (36 Ill. 2d R. 401(b)), while paragraph (a)(2) defines these consequences. The definition is the same as in Rule 402, paragraph (a)(2), concerning admonition of the consequences when a plea of guilty is accepted. See the committee comments to Rule 402.

Original Rule 401 (36 Ill. 2d R. 401), and Rule 401(a), as amended in 1970 (43 Ill. 2d R. 401(a)), required waiver of counsel only in cases in which the defendant was accused of a crime punishable by imprisonment in the penitentiary. In 1974, this paragraph of the rule was amended (58 Ill. 2d R. 401(a)) to conform to the decision of the Supreme Court of the United States in *Argersinger v. Hamlin* (1972), 407 U.S. 25, in which it was held that no imprisonment may be imposed, absent a knowing and intelligent waiver, unless the defendant was represented by counsel at his trial.

The present paragraph (b) is derived from the last two sentences of paragraph (b) of former Rule 401 (36 Ill. 2d R. 401).

In 1984 paragraph (b) was amended to require transcription of the verbatim report of waiver proceedings only when ordered by the trial court. This brings Rule 401(b) into line with Rule 402(e), which requires transcription of guilty-plea proceedings in felony cases to be transcribed only when ordered by the trial court.

[1]*The committee comments to Rules 401, 402, and 403 are those of the special committee appointed by the court to recommend rule revisions in the areas covered by those rules.

Rule 402. Pleas of Guilty or Stipulations Sufficient to Convict

In hearings on pleas of guilty, or in any case in which the defense offers to stipulate that the

evidence is sufficient to convict, there must be substantial compliance with the following:

(a) Admonitions to Defendant. The court shall not accept a plea of guilty or a stipulation that the evidence is sufficient to convict without first, by addressing the defendant personally in open court, informing him or her of and determining that he or she understands the following:

(1) the nature of the charge;

(2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences;

(3) that the defendant has the right to plead not guilty, or to persist in that plea if it has already been made, or to plead guilty; and

(4) that if he or she pleads guilty there will not be a trial of any kind, so that by pleading guilty he or she waives the right to a trial by jury and the right to be confronted with the witnesses against him or her; or that by stipulating the evidence is sufficient to convict, he or she waives the right to a trial by jury and the right to be confronted with any witnesses against him or her who have not testified.

(b) Determining Whether the Plea is Voluntary. The court shall not accept a plea of guilty without first determining that the plea is voluntary. If the tendered plea is the result of a plea agreement, the agreement shall be stated in open court. The court, by questioning the defendant personally in open court, shall confirm the terms of the plea agreement, or that there is no agreement, and shall determine whether any force or threats or any promises, apart from a plea agreement, were used to obtain the plea.

(c) Determining Factual Basis for Plea. The court shall not enter final judgment on a plea of guilty without first determining that there is a factual basis for the plea.

(d) Plea Discussions and Agreements. When there is a plea discussion or plea agreement, the following provisions, in addition to the preceding paragraph of this rule, shall apply:

(1) The trial judge shall not initiate plea discussions. Upon request by the defendant and with the agreement of the prosecutor, the trial judge may participate in plea discussions. Prior to participating in the plea discussions, the trial judge shall admonish the defendant and inquire as to the defendant's understanding of the following:

That the defendant's attorney has requested that the trial judge participate in the conference to determine whether or not the charge(s) which is/are pending against the defendant can be resolved by a plea of guilty;

That during the course of the conference the prosecutor will be present and advise the judge of the facts of the case as contained in the police reports or conversations with witnesses, that the defendant's attorney will also be present and will advise the judge of any information the defendant may have concerning the circumstances which led to the defendant's arrest in the case.

That without the conference, the judge would not learn about this information unless the case proceeded to trial.

That the judge will also learn whether the defendant has a prior criminal history, his or her driving record, whether the defendant has any alcohol or drug problem, the defendant's work history, family situation, and other things which would bear on what, if any punishment should be imposed upon the defendant as a result of his or her plea of guilty to one or more of these charges.

That these are things that the judge would not learn about unless the case went to trial and the defendant was found guilty.

That at the end of the conference, the judge may make a recommendation as to what an appropriate sentence would be.

That the defendant or the prosecutor is free to accept or reject the judge's recommendation. However, if the defendant rejects the judge's recommendation and he or she wishes to have a trial on the charges, the defendant may not obtain another judge solely on the basis that the judge participated in the conference and is aware of the facts and circumstances surrounding the incident as well as the defendant's background. This means that the defendant will be waiving his or her right to request a substitution of judge based upon the judge's knowledge of the case.

That knowing all of these things the defendant still wishes that the judge participate in this conference.

(2) If a tentative plea agreement has been reached by the parties which contemplates entry of a plea of guilty in the expectation that a specified sentence will be imposed or that other charges before the court will be dismissed, the trial judge may permit, upon request of the parties, the disclosure to him or her of the tentative agreement and the reasons therefor in advance of the tender of the plea. At the same time he the trial judge may also receive, with the consent of the defendant, evidence in aggravation or mitigation. The judge may then indicate to the parties whether he or she will concur in the proposed disposition; and if he the judge has not yet received evidence in aggravation or mitigation, he or she may indicate that his or her concurrence is conditional on that evidence being consistent with the representations made to him. If he the judge has indicated his or her concurrence or conditional concurrence, he the judge shall so state in open court at the time the agreement is stated as required by paragraph (b) of this rule. If the defendant thereupon pleads guilty, but the trial judge later withdraws his or her concurrence or conditional concurrence, he the judge shall so advise the parties and then call upon the defendant either to affirm or to withdraw his or her plea of guilty. If the defendant thereupon withdraws his or her plea, the trial judge shall recuse himself or herself.

(3) If the parties have not sought or the trial judge has declined to give his or her concurrence or conditional concurrence to a plea agreement, he the judge shall inform the defendant in open court at the time the agreement is stated as required by paragraph (b) of this rule that the court is not bound by the plea agreement, and that if the defendant persists in his or her plea the disposition may be different from that contemplated by the plea agreement.

(e) Transcript. In cases in which the defendant is charged with a crime punishable by

imprisonment in the penitentiary, the proceedings required by this rule to be in open court shall be taken verbatim, and upon order of the trial court transcribed, filed, and made a part of the common law record.

(f) Plea Discussions, Plea Agreements, Pleas of Guilty Inadmissible Under Certain Circumstances. If a plea discussion does not result in a plea of guilty, or if a plea of guilty is not accepted or is withdrawn, or if judgment on a plea of guilty is reversed on direct or collateral review, neither the plea discussion nor any resulting agreement, plea, or judgment shall be admissible against the defendant in any criminal proceeding.

Adopted June 26, 1970, effective September 1, 1970; amended effective September 17, 1970; amended January 5, 1981, effective February 1, 1981; amended May 20, 1997, effective July 1, 1997; amended April 26, 2012, eff. July 1, 2012.

M.R. 3140

IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS

Filed June 29, 2012.

JUSTICE BURKE, concurring in part and dissenting in part:

The court's amendments to Supreme Court Rule 402, effective July 1, 2012, formally authorize a judge to participate in plea discussions upon the request of a defendant and following proper admonishments. While I am in agreement with this change as a general matter, I am concerned that the amendments do not include an explicit allowance for a defendant's participation in the plea conference.

The Rule 402 conference is intended to be an open negotiating process, where all relevant information regarding the defendant will be discussed. The majority of these conferences, however, will involve a public defender, who simply cannot possess the level of personal information known to the individual defendant. The defendant will always have relevant information to bring to the conference and should be able to do so.

The admonishments contained in the amendments should include a statement that the defendant has the right to be present and to speak during the plea conference. Because this provision is not included in the amendments, I respectfully dissent.

JUSTICE FREEMAN joins in this partial concurrence and partial dissent.

Committee Comments

(Revised May 1997)

The procedure on pleas of guilty was previously dealt with briefly in former Rule 401, paragraph (b). More extended and specific treatment of this subject is now required for at least two reasons. For one, the Supreme Court of the United States has recently held that it is a violation of due process to accept a guilty plea in State criminal proceedings without an affirmative showing, placed on the record, that the defendant voluntarily and understandingly entered his plea of guilty. (*Boykin v. Alabama* (1969), 395 U.S. 238.) For another, increased attention has recently been given to the long-standing practice of pleading guilty as a consequence of a prior agreement between the prosecution and defense concerning the disposition of the case; it is generally conceded that "plea discussions" and "plea agreements" are often appropriate, but that such procedures should not be concealed behind an in-court ceremony at which the defendant sometimes seems to think that he is expected to state falsely that no promises were made to him. (See American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Pleas of Guilty (Approved Draft 1968); Enker, *Perspectives on Plea Bargaining*, in The President's Commission on Law Enforcement and Administration of Justice, Task Force Report (1967): The Courts.) Two major objectives of new Rule 402 are: (1) to insure compliance with the *Boykin* requirements; and (2) to give visibility to the plea-agreement process and thus provide the reviewing court with a record containing an accurate and complete account of all relevant circumstances surrounding the guilty plea. See *United States v. Jackson* (7th Cir. 1968), 390 F.2d 130.

Paragraph (a) sets forth the admonitions which must be given to the defendant to insure that his guilty plea is intelligently and understandingly made, as required by *Boykin*. Subparagraph (1) requires that the defendant be informed of the nature of the charge, as now also required by section 113-1 of the Code of Criminal Procedure of 1963. Subparagraph (2) requires that the defendant also be informed of the minimum and maximum sentences prescribed by law; this deviation from section 113-4(c) of the Code, which only expressly requires explanation of the "maximum penalty provided by law," is based upon the assumption that notice of both the minimum and maximum will give the defendant a more realistic picture of what might happen to him. (See ABA Standards Relating to Pleas of Guilty 28 (Approved Draft 1968).) Subparagraphs (3) and (4) cover the requirements enumerated in *Boykin*, namely, that the record on a guilty plea affirmatively show a waiver of "three important federal rights": the privilege against self-incrimination; the right to trial by jury; and the right to confront one's accusers.

The 1997 amendment was added to require that admonitions be given in cases in which the defense offers to stipulate to the sufficiency of the evidence to convict. See *People v. Horton*, 143 Ill. 2d 11 (1991).

Paragraph (b) requires a determination that the guilty plea is voluntary by inquiry of the defendant as to whether any force or threats or promises were made to him. This is now accepted practice, see, *e.g., People v. Darrah* (1965), 33 Ill. 2d 175, 210 N.E.2d 478, although not expressly required by Code section 113-4. In contrast to current practice, paragraph (b) also requires that if the tendered plea is the result of a plea agreement, then the agreement must be stated in open court. It is important to give visibility to the plea-agreement process in this way, as otherwise the

defendant may feel required to state falsely that no promises were made and the plea may later be subject to collateral attack.

Paragraph (c) requires that the court determine there is a factual basis for the plea. Such inquiry is not uncommon in current practice, but heretofore has not been specifically required by law. The language of paragraph (c) is based upon the recent revision of Rule 11 of the Federal Rules of Criminal Procedure, and, as is true under the Federal rule, no particular kind of inquiry is specified; the court may satisfy itself by inquiry of the defendant or the attorney for the government, by examination of the presentence report, or by any other means which seem best for the kind of case involved. For a statement of the value of such a procedure, see ABA Standards Relating to Pleas of Guilty 30-34 (Approved Draft 1968).

Underlying paragraph (d), concerning plea discussions and plea agreements, is the notion that it is sometimes permissible for a defendant to plead guilty pursuant to a prior agreement that the prosecution will obtain, seek, or not oppose a certain disposition. For one assessment of various reasons upon which such practices may be legitimately based, see ABA Standards Relating to Pleas of Guilty 36-52 (Approved Draft 1968).

Subparagraph (1) of paragraph (d) prohibits the trial judge from initiating plea discussions.

Under subparagraph (d)(2), the judge, if he considers it appropriate, may be advised, in advance of the plea, of the tentative plea agreement and indicate his conditional concurrence or (if, with consent of the defendant, he then receives evidence in aggravation or mitigation) concurrence. Such concurrence or conditional concurrence is to be stated for the record when the plea is received, but if the judge later determines before sentencing that a more severe disposition is called for he must so advise the defendant and give him an opportunity to withdraw the plea. If the defendant does withdraw his plea under these circumstances, it would be inappropriate for the same judge to be involved in the trial of the case, so he is required to recuse himself. If, however, the defendant elects not to withdraw his plea, the judge is not required to recuse himself. Under subparagraph (3), where there is a plea agreement but no concurrence or conditional concurrence by the judge (either because the parties have not sought it or the judge has declined to give it), the judge is required to advise the defendant that he is not bound by the agreement stated in court at the time of the plea. This caution will remove any possibility of an inference by the defendant that the judge's awareness of the agreement indicates concurrence in it. See *People v. Baldridge* (1960), 19 Ill. 2d 616, 169 N.E.2d 353.

Paragraph (e) is derived from former Rule 401. It was amended in 1981 to leave within the court's discretion the question of whether the proceedings shall be transcribed. The requirement that they shall be taken verbatim remains.

Paragraph (f) adopts the prevailing view that once a guilty plea has been annulled by withdrawal or other means, it should not be subsequently admissible against the defendant in criminal proceedings. (See *People v. Haycraft* (1966), 76 Ill. App. 2d 149, 221 N.E.2d 317.) It follows that a plea discussion which has not resulted in a still-effective guilty plea should likewise be inadmissible, for otherwise defendants could engage in plea discussions only at their peril.

Rule 402A. Admissions or Stipulations in Proceedings to Revoke Probation, Conditional Discharge or Supervision.

In proceedings to revoke probation, conditional discharge or supervision in which the defendant admits to a violation of probation, conditional discharge or supervision, or offers to stipulate that the evidence is sufficient to revoke probation, conditional discharge or supervision, there must be substantial compliance with the following.

(a) Admonitions to Defendant. The court shall not accept an admission to a violation, or a stipulation that the evidence is sufficient to revoke, without first addressing the defendant personally in open court, and informing the defendant of and determining that the defendant understands the following:

(1) the specific allegations in the petition to revoke probation, conditional discharge or supervision;

(2) that the defendant has the right to a hearing with defense counsel present, and the right to appointed counsel if the defendant is indigent and the underlying offense is punishable by imprisonment;>

(3) that at the hearing, the defendant has the right to confront and cross-examine adverse witnesses and to present witnesses and evidence in his or her behalf;

(4) that at the hearing, the State must prove the alleged violation by a preponderance of the evidence;

(5) that by admitting to a violation, or by stipulating that the evidence is sufficient to revoke, there will not be a hearing on the petition to revoke probation, conditional discharge or supervision, so that by admitting to a violation, or by stipulating that the evidence is sufficient to revoke, the defendant waives the right to a hearing and the right to confront and cross-examine adverse witnesses, and the right to present witnesses and evidence in his or her behalf; and

(6) the sentencing range for the underlying offense for which the defendant is on probation, conditional discharge or supervision.

(b) Determining Whether Admission Is Voluntary. The court shall not accept an admission to a violation, or a stipulation sufficient to revoke without first determining that the defendant's admission is voluntary and not made on the basis of any coercion or promise. If the admission or tendered stipulation is the result of an agreement as to the disposition of the defendant's case, the agreement shall be stated in open court. The court, by questioning the defendant personally in open court, shall confirm the terms of the agreement, or that there is no agreement, and shall determine whether any coercion or promises, apart from an agreement as to the disposition of the defendant's case, were used to obtain the admission.

(c) Determining Factual Basis for Admission. The court shall not revoke probation, conditional discharge or supervision on an admission or a stipulation without first determining that there is a factual basis for the defendant's admission or stipulation.

(d) Application of Rule 402. The provisions of Rules 402(d), (e), and (f) shall apply to proceedings on a petition to revoke probation, conditional discharge or supervision.

Adopted October 20, 2003, effective November 1, 2003.

Committee Comments

(October 20, 2003)

This rule follows the mandate expressed in *People v. Hall*, 198 Ill. 2d 173 (2001).

Rule 403. Pleas and Waivers by Persons Under 18

A person under the age of 18 years shall not, except in cases in which the penalty is by fine only, be permitted to enter a plea of guilty or to waive trial by jury, unless he is represented by counsel in open court.

Adopted June 26, 1970, effective September 1, 1970; amended August 9, 1983, effective October 1, 1983.

Committee Comments

(June 1970)

This rule is derived from former Rule 401, paragraph (c). The only change in substance is the insertion of the phrase "except in cases in which the penalty is by fine only," qualifying the requirement of representation by counsel when a person under 18 enters a plea of guilty or waives jury trial. This change conforms to section 113-5 of the Code of Criminal Procedure of 1963.

Rule 404. Application for Waiver of Court Assessments

(a) Contents. An Application for Waiver of Court Assessments in a criminal action pursuant to 725 ILCS 5/124A-20 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. The Application should be submitted no later than 30 days after sentencing.

(1) The contents of the Application must be sufficient to allow a court to determine whether an applicant qualifies for a full or partial waiver of assessments pursuant to 725 ILCS 5/124A-20 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 "Application for Waiver of Court Assessments" adopted by the Illinois Supreme Court Access to Justice Commission, which can be found in the Article IV 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 appear in person. 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 Assessments shall be made according to standards set forth in 725

ILCS 5/124A-20. If the Application is denied, the court shall enter an order to that effect specifying the reasons for the denial. If the court determines that the conditions for a full assessment waiver are satisfied under 725 ILCS 5/124A-20(b)(1), it shall enter an order waiving the payment of the assessments. If the court determines that the conditions for a partial assessment waiver under 725 ILCS 5/124A-20(b)(2) are satisfied, it shall enter an order for payment of a specified percentage of the assessments. If an Application is denied or an Application for a partial assessment waiver is granted, the court may allow the applicant to defer payment of the assessments, make installment payments, or make payment upon reasonable terms and conditions stated in the order.

(c) Filing. No fee may be charged for filing an Application for Waiver of Court Assessments. The clerk must allow an applicant to file an Application for Waiver of Assessments in the court where his case will be heard.

(d) Cases involving representation by criminal legal services providers or attorneys in court-sponsored *pro bono* program. In any case where a party is represented by a criminal legal services provider or an attorney in a court-sponsored *pro bono* program, the attorney representing that party shall file a certification with the court, and that party shall be allowed to proceed without payment of assessments as defined in 725 ILCS 5/124A-20(a) without necessity of an Application under this rule. "Criminal legal services provider" means a not-for-profit corporation that (i) employs one or more attorneys who are licensed to practice law in the State of Illinois and who directly provide free criminal legal services or (ii) is established for the purpose of providing free criminal legal services by an organized panel of *pro bono* attorneys. "Court-sponsored *pro bono* program" means a *pro bono* program established by or in partnership with a court in this State for the purpose of providing free criminal legal services by an organized panel of *pro bono* attorneys.

Adopted Feb. 13, 2019, eff. July 1, 2019.

Committee Comments

The Application for Waiver of Court Assessments form referenced in subparagraph (a)(2) of this rule will be promulgated before its July 1, 2019, effective date.

Rules 405-10. Reserved

Part B. Discovery

Rule 411. Applicability of Discovery Rules

These rules shall be applied in all criminal cases wherein the accused is charged with a felony, and all juvenile delinquency cases wherein the accused is charged with an offense that would be a felony if committed by an adult. They shall become applicable following indictment or information or petition for adjudication of wardship and shall not be operative prior to or in the course of any preliminary hearing.

Effective October 1, 1971; amended March 1, 2001, effective immediately, except when in the opinion of the trial, Appellate, or Supreme Court the application of the amended provisions in a particular case pending at the time the amendment becomes effective would not be feasible or would work an injustice, in which case former procedures would apply; amended December 9, 2011, effective immediately.

Committee Comments

Special Supreme Court Committee on Capital Cases

March 1, 2001

Rule 411, as amended, makes criminal discovery rules applicable to the sentencing hearing in a capital case. A capital sentencing hearing is a unique and complex proceeding, which often takes place immediately following trial on the merits. Allowing pretrial discovery for capital sentencing will assist counsel in preparing for this critical stage of a capital trial and prevent delay and disruption of the sentencing hearing. See also Rule 416(c) (pretrial notice of aggravating factors the State will rely upon in sentencing).

The amendment to Rule 411 does not create new forms of discovery. Instead, the amendment extends the application of existing discovery methods to capital sentencing hearings. The committee notes that any discovery rule that requires disclosure by the defense is subject to constitutional limitations and limitations based on attorney-client or other privilege. Existing discovery rules expressly mention constitutional limitations on defense disclosures (see, *e.g.*, Rule 413) and provide that attorney work product is not subject to disclosure by the State or the defense (Rule 412(j)).

The committee found that the existing discovery rules and associated case law would adequately address constitutional and privilege-based objections to pretrial disclosure of sentencing information by the defense. However, constitutional and privilege-based limitations on discovery do not preclude the possibility that pretrial disclosure of defense sentencing information could directly or indirectly aid the State's case on the merits. The extension of discovery procedures to capital sentencing is not intended to provide such an advantage to the State.

In the event the defense objects to disclosure of specific sentencing information on the ground that disclosure would harm the defense case on the merits, the trial court should take any action necessary to prevent that harm. Options available to the trial court include excision of objectionable material pursuant to Rule 415(e) and the use of protective orders to defer disclosure or restrict the use of information disclosed (Rule 415(d)). *In camera* review of a claim of potential harm from disclosure of sentencing information (Rule 415(f)) may be appropriate to prevent disclosure of defense theories or strategy, or where the identity of a defense sentencing witness is unknown to the State.

Committee Comments

To avoid confusion, the committee rejected the ABA standard which called for the application of discovery rules in "all serious criminal cases." No such standard exists in Illinois, and the application of the discovery rules is extended to all offenses carrying a possible penalty of

penitentiary imprisonment. The use of the extensive discovery procedures prescribed in these rules at preliminary stages of the criminal trial would serve no valid purpose, and their use is confined to post-indictment procedures. The committee considered but unanimously declined to make the rules applicable in juvenile court proceedings since the nature of such proceedings generally does not require discovery rules. However, if such proceedings become more adversary in nature, it may be desirable or necessary to apply the rules to them at some future date. In any event, the requirements of *In re Gault* (1967), 387 U.S. 1, must be met.

Rule 412. Disclosure to Accused

(a) Except as is otherwise provided in these rules as to matters not subject to disclosure and protective orders, the State shall, upon written motion of defense counsel, disclose to defense counsel the following material and information within its possession or control:

(i) the names and last known addresses of persons whom the State intends to call as witnesses, together with their relevant written or recorded statements, memoranda containing substantially verbatim reports of their oral statements, and a list of memoranda reporting or summarizing their oral statements. Upon written motion of defense counsel memoranda reporting or summarizing oral statements shall be examined by the court *in camera* and if found to be substantially verbatim reports of oral statements shall be disclosed to defense counsel;

(ii) any written or recorded statements and the substance of any oral statements made by the accused or by a codefendant, and a list of witnesses to the making and acknowledgment of such statements;

(iii) a transcript of those portions of grand jury minutes containing testimony of the accused and relevant testimony of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial;

(iv) any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons, and a statement of qualifications of the expert;

(v) any books, papers, documents, photographs or tangible objects which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused; and

(vi) any record of prior criminal convictions, which may be used for impeachment, of persons whom the State intends to call as witnesses at the hearing or trial.

If the State has obtained from the defendant, pursuant to Rule 413(d), information regarding defenses the defendant intends to make, it shall provide to defendant not less than 7 days before the date set for the hearing or trial, or at such other time as the court may direct, the names and addresses of witnesses the State intends to call in rebuttal, together with the information required to be disclosed in connection with other witnesses by subdivisions (i), (iii), and (vi), above, and a specific statement as to the substance of the testimony such witnesses will give at the trial of the cause.

(b) The State shall inform defense counsel if there has been any electronic surveillance (including wiretapping) of conversations to which the accused was a party, or of his premises.

(c) Except as is otherwise provided in these rules as to protective orders, the State shall disclose to defense counsel any material or information within its possession or control which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce his punishment therefor. The State shall make a good-faith effort to specifically identify by description or otherwise any material disclosed pursuant to this section based upon the information available to the State at the time the material is disclosed to the defense. At trial, the defendant may not offer evidence or otherwise communicate to the trier of fact the State's identification of any material or information as tending to negate the guilt of the accused or reduce his punishment.

(d) The State shall perform its obligations under this rule as soon as practicable following the filing of a motion by defense counsel.

(e) The State may perform these obligations in any manner mutually agreeable to itself and defense counsel or by:

(i) notifying defense counsel that material and information, described in general terms, may be inspected, obtained, tested, copied, or photographed, during specified reasonable times; and

(ii) making available to defense counsel at the time specified such material and information, and suitable facilities or other arrangements for inspection, testing, copying and photographing of such material and information.

(f) The State should ensure that a flow of information is maintained between the various investigative personnel and its office sufficient to place within its possession or control all material and information relevant to the accused and the offense charged.

(g) Upon defense counsel's request and designation of material or information which would be discoverable if in the possession or control of the State, and which is in the possession or control of other governmental personnel, the State shall use diligent good-faith efforts to cause such material to be made available to defense counsel; and if the State's efforts are unsuccessful and such material or other governmental personnel are subject to the jurisdiction of the court, the court shall issue suitable subpoenas or orders to cause such material to be made available to defense counsel.

(h) Discretionary Disclosures. Upon a showing of materiality to the preparation of the defense, and if the request is reasonable, the court, in its discretion, may require disclosure to defense counsel of relevant material and information not covered by this rule.

(i) Denial of Disclosure. The court may deny disclosure authorized by this rule and Rule 413 if it finds that there is substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from such disclosure which outweighs any usefulness of the disclosure to counsel.

(j) Matters Not Subject to Disclosure.

(i) *Work Product.* Disclosure under this rule and Rule 413 shall not be required of legal

research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the State or members of its legal or investigative staffs, or of defense counsel or his staff.

(ii) *Informants.* Disclosure of an informant's identity shall not be required where his identity is a prosecution secret and a failure to disclose will not infringe the constitutional rights of the accused. Disclosure shall not be denied hereunder of the identity of witnesses to be produced at a hearing or trial.

(iii) *National Security.* Disclosure shall not be required where it involves a substantial risk of grave prejudice to national security and where a failure to disclose will not infringe the constitutional rights of the accused. Disclosure shall not thus be denied hereunder regarding witnesses or material to be produced at a hearing or trial.

Effective October 1, 1971; amended October 1, 1976, effective November 15, 1976; amended June 15, 1982, effective July 1, 1982; amended March 1, 2001, effective immediately, except when in the opinion of the trial, Appellate, or Supreme Court the application of the amended provisions in a particular case pending at the time the amendment becomes effective would not be feasible or would work an injustice, in which case former procedures would apply.

Committee Comments

Special Supreme Court Committee on Capital Cases

March 1, 2001

In developing the specific-identification proposal, the committee was concerned with the possibility that information that clearly tends to be exculpatory or mitigating would not be disclosed or would be lost among other information. Examples of information that clearly tends to be exculpatory or mitigating include: a statement that a person other than the defendant committed the crime, a statement that the act that caused death was committed by an accomplice, or a preliminary scientific test result that is not inculpatory, and some types of impeachment evidence, such as certain prior convictions of State witnesses, information concerning promises or expectations of leniency for a State witness, or prior inaccurate or unsuccessful attempts at identification of the perpetrator by an occurrence witness. The purpose of the specific-identification requirement is to reinforce the duty to disclose and reduce the chance of pretrial or trial error with respect to this type of evidence.

The amendment to paragraph (c) requires a "good-faith" effort to specifically identify exculpatory and mitigating materials "based on information available to the State at the time the material is disclosed to the defense." Thus, the duty to specifically identify is not as broad as the duty to disclose under Rule 412(c). See Rule 416(g), committee comments. The good-faith standard is intended to avoid creating an impossible burden for the prosecution. A "good-faith" effort by prosecutors would include the specific identification of information that clearly tends to be exculpatory or mitigating. The amended rule is not intended to require that prosecutors specifically identify materials with remote or speculative exculpatory or mitigating value. The

need to specifically identify materials falling between the extremes will depend upon the facts of the case.

The language stating that the duty to identify exculpatory or mitigating information must be viewed in light of the information available to the State when the material is disclosed to the defense is significant for several reasons. First, the information available to the State when disclosure is made will guide the determination of whether the State has made a good-faith effort to specifically identify exculpatory or mitigating information. Failure to identify information that can be characterized as exculpatory or mitigating only when viewed in light of the defense's theory of the case cannot be seen as evidence of failure to comply with the rule when the State was not aware of the defense theory. Second, placing the focus of the inquiry regarding compliance with the rule on information available at the time of disclosure to the defense is intended to avoid a standard based on hindsight evaluation of the exculpatory or mitigating value of information. Thus, a prosecutor's failure to identify information should not be second-guessed based on defense theories revealed after the information has been disclosed, unexpected events at trial, or new theories suggested after the trial.

The committee notes that in light of new evidence received or events at trial, materials that had no exculpatory value when initially disclosed could be viewed as exculpatory later in the trial process. The committee did not intend that the duty to specifically identify exculpatory or mitigating information would be subject to continuous updating.

The specific identification of potentially exculpatory or mitigating material by the prosecution pursuant to paragraph (c) is not an admission by the State for any purpose. Neither the terms or manner of the specific identification by the prosecution nor the fact that the prosecution has made the specific identification are relevant or admissible for the purposes of trial on the merits or sentencing. In addition, specific identification of materials pursuant to paragraph (c) does not imply that the material will be admissible as evidence

Committee Comments

Paragraph (a). It is intended that the disclosures required by this paragraph be implemented as a matter of course, and without time-consuming recourse to the courts. The discovery is not intended to be "automatic," in the sense that the State is not required to furnish information without any request by the defense counsel. It is recognized that in many cases discovery will be neither necessary nor wanted; paragraph (a), therefore, reflects the committee's opinion that the choice of discovery or no discovery under this rule be within the discretion of defense counsel. By requiring the motion to be made in writing, rather than allowing oral motions, the committee expressed the intent that certainty was necessary in order to prevent later disputes.

Paragraph (a), subparagraph (i), enlarges upon the Code of Criminal Procedure of 1963, section 114-9(a). In addition to requiring production of a list of intended witnesses and their last known addresses (in the case of a police officer his official address shall be sufficient), the State will also be expected to produce these witnesses' prior statements. *People v. Moses*, 11 Ill. 2d 84, 142 N.E.2d 1 (1957), and decisions thereunder required the State to tender to defense counsel all such

statements when the witness was tendered for cross-examination. Nothing herein changes the types of material that are to be provided; only the time of their disclosure is changed. By requiring disclosure prior to trial, it is hoped that the fruits of discovery can be harvested. Or in the event the parties have been unable to arrange a guilty plea or a dismissal, the disclosure assures defense counsel adequate time to prepare. Pretrial disclosure of this nature not only affords defense counsel adequate opportunity to investigate the case, but also ensures the end of untimely interruptions at trial occasioned by disclosures of statements at trial. The ABA standard limited production of witnesses' statements to those in written or recorded form. Paragraph (a), subparagraph (i), requires the additional production of any substantially verbatim report of an oral statement by a witness. The State is also obliged to produce a list of all memoranda reporting or summarizing oral statements whether or not the memoranda appear to the State to be substantially verbatim reports of such statements. The defense is then entitled, upon filing of a written motion, to have the court examine the memoranda listed by the State. If the court finds that the memoranda do contain substantially verbatim reports of witness statements, the memoranda will be disclosed to defense counsel. This additional requirement serves two purposes. First, it ensures that the final responsibility for determining what is producible rests with the court. Second, it establishes, as a matter of record, the contents of the State's file with respect to reports of witness' statements and thereby facilitates appellate review of contested questions of discovery under this subsection.

Paragraph (a), subparagraph (ii), is substantially section 114-10(a) of the Code of Criminal Procedure of 1963. Because of the decision in *Miranda v. Arizona*, 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1601 (1966), uncertainty as to the proper definition of "confession" exists. To ensure uniformity the committee therefore chose to make all statements, not only confessions, discoverable. The availability of all such statements will also enable defense counsel to better prepare the case. The major change in prior law is that provision which makes discoverable the prior statements, etc., of all the accused's codefendants. If an informed motion for severance or excision of a codefendant's statement to remove prejudice is to be properly made, defense counsel must be able to obtain all of the codefendant's statements.

Paragraph (a), subparagraph (iii), adopts the ABA standard for production of grand jury minutes. In terms of Illinois practice, it makes mandatory disclosure of what is now discretionary under the second sentence of section 112-6(b) of the Code of Criminal Procedure of 1963. Such full disclosure is now required in a number of other jurisdictions, including California, Iowa, Kentucky and Minnesota.

In paragraph (a), subparagraph (iv), the committee chose to adopt the standard recommended by the ABA. There should be no problem of tampering with or misuse of the information, and without the opportunity to examine such evidence prior to trial defense counsel has the very difficult task of rebutting evidence of which he is unaware. In the interest of fairness paragraph (a), subparagraph (iv), requires the disclosure of all such results and reports, whether the result or report is "positive" or "negative," and whether or not the State intends to use the report at trial. If the State has the opportunity to view the results of any such examination, the same opportunity should enure to defense counsel. No relevancy limitation is included; the only requirement is that the examination, etc., have been made "in connection with" the case. This subparagraph, and the

others in this paragraph, are intended to supplement Rule 412(c), which requires the State to disclose any results, etc., which tend to negate the guilt of the accused or would tend to reduce his punishment were he convicted.

Paragraph (a), subparagraph (v), is identical to the ABA standard for production of books, papers, documents, photographs and tangible objects.

Paragraph (a), subparagraph (vi), differs from the ABA standards in that it is limited to prior convictions which may be used for impeachment purposes in Illinois. The committee could discern no valid reason why this information should not be disclosed to the defense prior to trial when such information is in the possession or control of the State.

Paragraph (b) is included to expose for appropriate challenge an important collateral constitutional question. The nature of the exposure is designed to ensure the confidentiality of the information, and to provide flexibility in the releasing of the information, but to permit the litigation of any issues which those facts may present at a time when such litigation is most economical for the process. The necessity of the revelation of the existence of electronic surveillance has been recognized, and *in camera* hearings on the question of suppression of such evidence might be necessary. (*Alderman v. United States*, 394 U.S. 165, 22 L. Ed. 2d 176, 89 S. Ct. 961 (1969).) Because of the small number of cases in which such activity is involved, the committee chose to put the burden on the State to inform defense counsel, rather than to require the submission of a motion.

Paragraph (c) is included to comply with the constitutional requirement that the prosecution disclose, "evidence favorable to an accused *** where the evidence is material either to guilt or to punishment." (*Brady v. Maryland*, 373 U.S. 83, 87, 10 L. Ed. 2d 215, 218, 83 S. Ct. 1194, 1196-97 (1963).) Although the pretrial disclosure of such material is now not constitutionally required, it is clear that, if a conviction is to be valid, the material must be disclosed so that the defense can make use of it. In providing for pretrial disclosure, this paragraph permits adequate preparation for, and minimizes interruptions of, a trial, and assures informed pleas by the accused.

Paragraph (d) differs from the ABA standards only to require the State to perform its obligations as soon as is practicable following defense counsel's motion for discovery, rather than as soon as is practicable following his request for discovery. This change was made to accommodate the procedures of Rule 412(a), which require the filing of a written motion to initiate most discovery. More precision in describing the standard for performance was not deemed feasible for a rule that would be applied in such a wide variety of situations.

Paragraph (e) is designed to provide an orderly procedure for disclosure by the State. It delimits the extent of its responsibility to notifying defense counsel, only in general terms, as to the existence and availability of the material and information. The State need not send copies to defense counsel and it need not point out the significance of various items. It must, however, make the material available at specified and reasonable times, and permit-and provide suitable facilities or other arrangements for-inspection, testing, copying and photographing the material or information. If the State should desire to delay or restrict discovery it can seek a protective order therefor (Rule 415(d)) at the time of defense counsel's original motion, or at any time following. Access to material by a defense expert must be permitted, sufficient to allow him to reach

conclusions regarding the State's examining or testing techniques and results. Where feasible, defense counsel should have the opportunity to have a test made by his chosen expert, either in the State's laboratory or in his own laboratory using a sufficient sample.

Paragraph (f) is designed to deal with the problem of the extent to which the State can be expected to know of the existence of material or information which it is obligated to disclose. In discharging its duties it should know, or seek to know, of the existence of material or information at least equal to that which it should disclose to defense counsel. The formulation of a rule such as this means especially that the State should not discourage the flow of information to it from investigative personnel in order to avoid having to make disclosure. Supplementing paragraph (f) are Rules 412(g), dealing with material held by other government personnel, and 415(b), dealing with the State's continuing duty to disclose new information of which it learns. The committee chose not to include a rule similar to ABA standard 2.1(d), which describes persons whose possession or control of material and information could be imputed to the prosecutor. It is assumed that this paragraph and the paragraphs cited in this comment will be sufficient to guide a court in determining if proper disclosure has been made.

Paragraph (g) is part of the attempt to delineate the scope of the State's responsibilities for obtaining information which it is obligated to disclose to defense counsel. It complements the requirement in Rule 412(F), that it ensure the flow of information between the prosecutor and investigative personnel. Since the State's obligations are not limited to revealing only what happens to come within its possession or control, it is expected that the State will attempt to obtain material not within its possession but of which it has knowledge. Accordingly, this paragraph is primarily concerned with material of which the State does not have knowledge but of which defense counsel is aware; and therefore the burden is upon defense counsel to make the request and to designate the material or information which he wishes to inspect. This paragraph avoids placing the burden on the prosecutor, in the first instance, of canvassing all governmental agencies which might conceivably possess information relevant to the defendant. Paragraph (g) is not intended to enlarge the scope of discovery but merely to deal with problems of implementation. It is, therefore, limited to material or information "which would be discoverable if in the possession or control of the State."

Paragraph (h) of this rule authorizes discovery only if the court so orders within the exercise of its discretion; discovery will only be allowed when defense counsel can show that what he seeks is material to the preparation of the defense. Though there was some opinion in the committee that the production of items and the performance of duties required in paragraphs 412(a) through (g) would result in adequate discovery in most cases, by providing for mandatory discovery the committee did not intend to bar discovery of any other matters which the defense might find useful. To deal with such a broad area, however, it is believed that the criteria here set forth and the discretionary power accorded to the court provide a satisfactory balance between the needs of the State and the needs of the defense.

Paragraph (i). Although the ABA standards combine the provisions of this paragraph with the provisions of paragraph 412(h), the committee separated the paragraphs. By separating the two paragraphs it was felt that there would be no confusion in the application of the court's right to

deny disclosure. Paragraph (i) is intended not only to be used by the court in conjunction with the discretionary disclosures provided for in paragraph 412(h), but is also to be applied whenever the risks of disclosure outweigh the advantages of such disclosure to the defense or State.

Under paragraph (j), subparagraph (i), the material which is protected is primarily that which is protected from civil discovery under the doctrine of *Hickman v. Taylor*, 329 U.S. 495 (1947). But rather than merely indicate that "work product" is exempted from discovery the committee chose instead to define it in such a way as to provide guidance to those who will administer and carry out the disclosures provided for in these rules.

Paragraph (i), subparagraph (ii). The value of informants to effective law enforcement is so highly regarded that encouragement of their use, through protection of their identity, has resulted in the development of one of the few privileges accorded to the State. The public interest in protecting the sources of information concerning the commission of crimes is served by providing for the nondisclosure of the identity of informants except when compelling circumstances require it. Disclosure should only be required when constitutional problems are raised or when the informant's identity is to be disclosed at trial (although a protective order under Rule 414(d) might still be in order). The cases which have established this privilege include *McCray v. Illinois*, 386 U.S. 300 (1967), *Roviaro v. United States*, 353 U.S. 53 (1957), *People v. White*, 16 N.Y.2d 270, 266 N.Y.S.2d 100, 213 N.E.2d 438 (1965), and *Commonwealth v. Carter* 208 Pa. Super. 245, 222 A.2d 475 (1966), aff'd mem., 209 Pa. Super. 732, 226 A.2d 215 (1967).

Paragraph (j), subparagraph (iii). While a defendant has a constitutional right to information which tends to negate his guilt or mitigate his punishment (*Brady v. Maryland*, 373 U.S. 83 (1963)), and to be confronted with the witnesses against him (*Jencks v. United States*, 353 U.S. 657 (1957)), and to any other information the withholding of which might violate his constitutional rights, he has no such right to information which does not affect his constitutional rights. This subparagraph, therefore, permits nondisclosure if disclosure would involve a substantial risk of grave prejudice to national security, and if such nondisclosure does not violate a constitutional right of the defendant. If the State intends to use the information or material at trial it should be disclosed to defendant prior to trial unless the State obtains a protective order delaying disclosure.

Rule 413. Disclosure to Prosecution

(a) The Person of the Accused. Notwithstanding the initiation of judicial proceedings, and subject to constitutional limitations, a judicial officer may require the accused, among other things, to:

(i) appear in a lineup;

(ii) speak for identification by witnesses to an offense;

(iii) be fingerprinted;

(iv) pose for photographs not involving reenactment of a scene;

(v) try on articles of clothing;

(vi) permit the taking of specimens of material under his fingernails;

(vii) permit the taking of samples of his blood, hair and other materials of his body which involve no unreasonable intrusion thereof;

(viii) provide a sample of his handwriting; and

(ix) submit to a reasonable physical or medical inspection of his body.

(b) Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given by the State to the accused and his counsel, who shall have the right to be present. Provision may be made for appearances for such purposes in an order admitting the accused to bail or providing for his release.

(c) Medical and Scientific Reports. Subject to constitutional limitations, the trial court shall, on written motion, require that the State be informed of, and permitted to inspect and copy or photograph, any reports or results, or testimony relative thereto, of physical or mental examinations or of scientific tests, experiments or comparisons, or any other reports or statements of experts which defense counsel has in his possession or control, including a statement of the qualifications of such experts, except that those portions of reports containing statements made by the defendant may be withheld if defense counsel does not intent to use any of the material contained in the report at a hearing or trial.

(d) Defenses. Subject to constitutional limitations and within a reasonable time after the filing of a written motion by the State, defense counsel shall inform the State of any defenses which he intends to make at a hearing or trial and shall furnish the State with the following material and information within his possession or control:

(i) the names and last known addresses of persons he intends to call as witnesses, together with their relevant written or recorded statements, including memoranda reporting or summarizing their oral statements, and record of prior criminal convictions known to him; and

(ii) any books, papers, documents, photographs, or tangible objects he intends to use as evidence or for impeachment at a hearing or trial;

(iii) and if the defendant intends to prove an alibi, specific information as to the place where he maintains he was at the time of the alleged offense.

(e) Additional Disclosure. Upon a showing of materiality, and if the request is reasonable, the court in its discretion may require disclosure to the State of relevant material and information not covered by this rule.

Effective October 1, 1971; amended October 1, 1976, effective November 15, 1976; amended June 15, 1982, effective July 1, 1982.

Committee Comments

Paragraphs (a) and (b) provide for procedures to secure evidence from or involving the use of defendant's person consistent with the rules enunciated in *Gilbert v. California*, 388 U.S. 263 (1967), and cases cited therein. See also *Williams v. United States*, 419 F.2d 740 (D.C. Cir. 1970) (bail order may provide for appearance of defendant for lineup).

Paragraph (c) provides for the production of medical and scientific evidence in the possession or control of defense counsel. Such evidence does not fall within the attorney-client privilege (*People v. Speck*, 41 Ill. 2d 177), nor does such evidence involve self-incrimination unless it is based upon statements made by defendant. Where statements of defendant are involved they may be excised from reports. When defense counsel intends to use the scientific or medical evidence based upon the defendant's statements to the expert, excision shall not be made.

Paragraph (d) requires that defense counsel inform the State of any defenses he intends to offer. The notice of defenses includes both affirmative defenses, *i.e.*, insanity, and nonaffirmative defenses, *i.e.*, consent to intercourse in rape cases. The notice may include alternative and inconsistent defenses. In addition, defense counsel must produce a list of witnesses and their statements, along with any records or physical evidence he intends to use and any record of prior convictions, known to him. The general justifications for discovery in criminal cases apply to discovery against the defense. Such discovery eliminates unfair surprise and allows the opposing party to establish the truth or falsity of the defense. In addition, discovery against the defense eliminates the argument that criminal discovery is a one-way street. The discovery provisions with respect to the defense case are based upon two further premises: (1) when defense counsel receives full discovery of the evidence the State will introduce, he can then determine what defenses he can offer to that evidence and (2) only when defense counsel states his defense or defenses can the trial court make a full and fair determination of whether the dictates of *Brady v. Maryland*, 373 U.S. 83 (1963), have been fully met.

Paragraph (e) allows the court to order additional discovery not covered by the remainder of the rule but only upon a showing of materiality and reasonableness. The provision is parallel to Rule 412(h).

Rule 414. Evidence Depositions

(a) If it appears to the court in which a criminal charge is pending that the deposition of any person other than the defendant is necessary for the preservation of relevant testimony because of the substantial possibility it would be unavailable at the time of hearing or trial, the court may, upon motion and notice to both parties and their counsel, order the taking of such person's deposition under oral examination or written questions for use as evidence at a hearing or trial.

(b) The taking of depositions shall be in accordance with rules providing for the taking of depositions in civil cases, and the order for the taking of a deposition may provide that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.

(c) If a witness is committed for failure to execute a recognizance to appear to testify at a hearing or trial, the court, on written motion of the witness and upon notice to the State and defense counsel, may order that his deposition be taken, and after the deposition has been subscribed, the court may discharge the witness.

(d) Rule 207-Signing and Filing Depositions-shall apply to the signing and filing of depositions taken pursuant to this rule.

(e) The defendant and defense counsel shall have the right to confront and cross-examine any witness whose deposition is taken. The defendant and defense counsel may waive such right in writing, filed with the clerk of the court.

(f) If the defendant is indigent, all costs of taking depositions shall be paid by the county wherein the criminal charge is initiated. If the defendant is not indigent the costs shall be allocated as in civil cases.

Effective October 1, 1971.

Committee Comments

The committee chose not to include depositions for discovery purposes, but did decide to follow the unmistakable trend and provide for depositions to preserve testimony. This rule allows both the State and defense counsel to take such depositions and use the testimony as evidence at a hearing or trial in situations where the potential witness will be unable to appear at hearing or trial for any reason. The deposition is not taken by right but is subject to court approval. Notice should be taken of the fact that depositions may be taken by written questions as well as by oral examination.

Paragraph (c) provides for the taking of a deposition in circumstances which most other jurisdictions have recognized as a necessary use of depositions. In order to prevent unnecessary incarceration, a judge may permit the deposition of a witness committed for failure to execute a recognizance to appear.

Paragraphs (e) and (f) protect the defendant's constitutional rights. Paragraph (e) protects his rights of confrontation and cross-examination, and paragraph (f) assures equal protection to those indigents whose defense requires the taking of a deposition.

Rule 415. Regulation of Discovery

(a) Investigations Not to be Impeded. Except as is otherwise provided as to matters not subject to disclosure and protective orders, neither the counsel for the parties nor other prosecution or defense personnel shall advise persons having relevant material or information (except the accused) to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(b) Continuing Duty to Disclose. If, subsequent to compliance with these rules or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, he or she shall promptly notify the other party or his or her counsel of the existence of such additional material, and if the additional material or information is discovered during trial, the court shall also be notified.

(c) Custody of Materials. Any materials furnished to an attorney pursuant to these rules shall remain in his or her exclusive custody unless the court authorizes dissemination pursuant to this rule, shall be used only for the purposes of conducting his or her side of the case, and shall be

subject to such other terms and conditions as the court may provide. Upon motion of the attorney, the court shall, within 5 court days, enter an order allowing the attorney to provide a copy of the discovery to the defendant unless good cause is shown why the discovery should not be furnished to the defendant. Absent the court order allowing otherwise, materials furnished to a defendant by a defense attorney pursuant to these rules shall not contain any contact information for the witnesses, mental health counselors or victim's advocates, or other personal identifiers of such witnesses such as addresses; dates of birth; phone numbers; Social Security numbers; financial institution information; driver's license and state identification numbers; checking, credit, or debit card information; e-mail address or other social media contacts; or medical or mental health records and shall not contain photographs or videos of victims of sexual assault, sexual abuse, or child pornography.

(d) Protective Orders. If, when furnishing any material to an attorney or a defendant pursuant to these rules, the party furnishing the materials files for a protective order to restrict or defer further disclosures, the attorney or defendant shall not furnish to anyone the materials identified in the motion until the motion for a protective order is ruled upon by the court. Upon a showing of cause, the court may at any time order that specified disclosures or redisclosures be restricted, conditioned upon compliance with protective measures or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled is disclosed in sufficient time to permit counsel or the defendant to make beneficial use of the disclosure.

(e) Excision. When some parts of certain material are discoverable under these rules, and other parts not discoverable, as much of the material should be disclosed as is consistent with the rules. Excision of certain material and disclosure of the balance is preferable to withholding the whole. Material excised pursuant to judicial order shall be sealed, impounded and preserved in the records of the court, to be made available to the reviewing court in the event of an appeal.

(f) In Camera Proceedings. Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosures, or portion of such showing, to be made *in camera*. A record shall be made of such proceedings. If the court enters an order granting relief following a showing *in camera*, the entire record of such showing shall be sealed, impounded, and preserved in the records of the court, to be made available to the reviewing court in the event of an appeal.

(g) Sanctions.

(i) If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court may order such party to permit the discovery of material and information not previously disclosed, grant a continuance, exclude such evidence, or enter such other order as it deems just under the circumstances.

(ii) Wilful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel or the defendant to contempt of court or other appropriate sanctions by the court.

Effective October 1, 1971; amended Oct. 23, 2020, eff. immediately.

Committee Comments

(Revised Oct. 23, 2020)

Paragraph (a). One barrier to pretrial investigation and meaningful discovery procedures is the practice of some attorneys of advising witnesses not to cooperate with opposing counsel. This paragraph is included to provide that discovery shall not be frustrated by improper conduct of counsel or the various agents of counsel.

Paragraph (b) is modeled after Federal Rule of Criminal Procedure 16(c). This paragraph is intended to permit thorough preparation and to minimize paperwork and delay. After discovery has been conducted as provided, any additional material or information acquired by either side which is subject to disclosure should be automatically and promptly disclosed. The notification required by this paragraph is intended to make such disclosures as simple and easy as possible.

Paragraph (c). This paragraph recognizes that most discovery in the overwhelming majority of cases has little to no information that is of any interest to anyone except the parties and their counsel. Likewise, the paragraph recognizes the compelling need that may arise for defense counsel to share discovery in whole or in part with their client for their client to review without supervision of counsel. The choice of how to review discovery with a client is one best left to the professional and ethical decision of counsel. Upon a motion by defendant's attorney the court shall allow the furnishing of discovery to the defendant unless the State objects, at which time the court shall weigh the benefit to the defense against any potential harm or danger raised by the prosecution and enter an appropriate order. This facilitates more effective and efficient representation of defendant by allowing the exchange of discovery between a defendant and the defendant's attorney. At the same time, in order that needs of exceptional cases be recognized, the rule provides that the disclosing party may seek a protective order to fit specific circumstances of cases. After objection by the State and before granting a blanket prohibition on furnishing discovery to a client, the court shall consider how an order granting limited disclosure of discovery can be accomplished. It should be noted that this paragraph also applies to the State. Nothing in this paragraph should be interpreted to prevent counsel from having tests performed by experts on materials furnished by opposing counsel or from having experts examine reports received from opposing counsel. Tangible objects, such as guns, knives, clothing, not subject to duplication but furnished for purposes of testing, *etc.*, should be returned to the furnishing party when such testing or inspection is completed. If not returned routinely the last phrase permits the court to so order, in addition to any other terms and conditions provided.

Paragraph (d). In order that legitimate needs of exceptional cases will not shape discovery policy and result in denial of discovery in all cases, this paragraph is designed to provide sufficient flexibility to meet such exceptional needs. This paragraph, adapted from Federal Rule of Criminal Procedure 16(e), permits application by the party concerned to the court for a protective order adjusting the time, place, recipient, or use of the disclosures as are necessary in a particular case. It is anticipated that it will ordinarily be needed with respect to those matters for which discovery

is mandatory, rather than matters where the court has discretion in allowing discovery under Rule 412(h). While the protective order is designed to permit flexibility, it is to be used under a policy of as full and as early discovery as possible; it is not intended to permit denial of disclosure, although it may result in deferral until a later time. The disclosure must be made in time for a party to make beneficial use of it. Normal use of the protective order will be made when there is substantial risk to any person of physical harm, intimidation, bribery, or economic reprisals which outweigh any usefulness of disclosure to the defendant or State. This rule also establishes safeguards to prevent the expeditious redisclosure of discovery by an attorney to a defendant prior to entry of a protective order. Once a protective order is sought by motions, redistribution of the materials is automatically restricted until the court rules on the motion for a protective order. At that hearing the court could weigh the need and efficiency of disclosure against legitimate concerns in cases such as those involving sexual assault or domestic violence that victims and witnesses feel safe and not be subject to harassment or embarrassment.

Paragraph (e). Occasions will arise when material will contain information which is both discoverable and nondiscoverable. This paragraph recognizes the right of a party to excise, or have excised, the nondiscoverable portion. The procedure under this paragraph is different from that under the Jencks Act, 18 U.S.C. §3500(c), and under present Illinois practice, only in giving approval to a party excising portions of material without court supervision. Approval of counsel's independent conduct is consistent with the purpose of expediting the discovery process, but it is expected that in many cases counsel will seek a decision by the court, and that, in any event, he will be held accountable for excisions, if they are challenged by opposing counsel. The only change from the ABA standards is the requirement that the material excised pursuant to a judicial order not only be sealed, but also impounded and preserved.

Paragraph (f) provides for preserving the confidentiality of material at such times as the trial court is called upon to decide whether to require its disclosure. In issuing protective orders under paragraph (d), allowing excision of portions of material under paragraph (e), or in otherwise deciding that certain material is not subject to disclosure, the trial court must have an opportunity to examine, in private, the particular material as well as the reasons for nondisclosure. The purpose of issuing such rulings would often be defeated if the hearing were to be held in open court. To protect the litigants from error by the trial court, provision is made for the making and preserving of a record of all such proceedings for purposes of appeal.

Through paragraph (g), the committee intended to emphasize that these discovery rules must be enforced. Rather than attempt to provide specific sanctions for specific violations, the committee deemed it wise to leave the sanctions to the discretion of the trial court. This paragraph does contain one provision not present in the ABA standards. If justified under the circumstances, the court may exclude evidence which a party has failed to disclose under applicable discovery rules. The committee felt that such a device is a useful sanction, and that even though some problems may arise in applying it against the accused, the sanction can be applied in some situations. In this regard this paragraph conforms to Federal Rule of Criminal Procedure 16(g), and further guarantees the expedition of the discovery process. The sanctions listed are not exclusive.

Rule 416. Reserved

Rule 417. DNA Evidence

(a) Statement of Purpose. This rule is promulgated to produce uniformly sufficient information to allow a proper, well-informed determination of the admissibility of DNA evidence and to insure that such evidence is presented competently and intelligibly. The rule is designed to provide a minimum standard for compliance concerning DNA evidence, and is not intended to limit the production and discovery of material information.

(b) Obligation to Produce. In all felony prosecutions, post-trial and post-conviction proceedings, the proponent of the DNA evidence, whether prosecution or defense, shall provide or otherwise make available to the adverse party all relevant materials, including, but not limited to the following:

(i) Copies of the case file including all reports, memoranda, notes, phone logs, contamination records, and data relating to the testing performed in the case.

(ii) Copies of any autoradiographs, lumigraphs, DQ Alpha Polymarker strips, PCR gel photographs and electropherogams, tabular data, electronic files and other data needed for full evaluation of DNA profiles produced and an opportunity to examine the originals, if requested.

(iii) Copies of any records reflecting compliance with quality control guidelines or standards employed during the testing process utilized in the case.

(iv) Copies of DNA laboratory procedure manuals, DNA testing protocols, DNA quality assurance guidelines or standards, and DNA validation studies.

(v) Proficiency testing results, proof of continuing professional education, current curriculum vitae and job description for examiners, or analysts and technicians involved in the testing and analysis of DNA evidence in the case.

(vi) Reports explaining any discrepancies in the testing, observed defects or laboratory errors in the particular case, as well as the reasons for those and the effects thereof.

(vii) Copies of all chain of custody documents for each item of evidence subjected to DNA testing.

(viii) A statement by the testing laboratory setting forth the method used to calculate the statistical probabilities in the case.

(ix) Copies of the allele frequencies or database for each locus examined.

(x) A list of all commercial or in-house software programs used in the DNA testing, including the name of the software program, manufacturer and version used in the case.

(xi) Copies of all DNA laboratory audits relating to the laboratory performing the particular tests.

Adopted March 1, 2001, effective immediately, except when in the opinion of the trial, Appellate, or Supreme Court the application of the new rule in a particular case pending at the time the rule becomes

effective would not be feasible or would work an injustice, in which case former procedures would apply.

Committee Comments

Special Supreme Court Committee on Capital Cases

March 1, 2001

The standardized disclosures required by Rule 417 are intended to provide the information necessary for a full understanding of DNA test results, and to aid litigants and the courts in determining the admissibility of those results. The rule requires disclosure of information that is, or should be, readily available from any laboratory performing DNA testing. Standardized disclosure requirements should also make responses to disclosure requests less burdensome for laboratory personnel.

In drafting the rule, the committee considered court opinions from several jurisdictions that established guidelines for pretrial disclosures regarding DNA evidence. See, *e.g.*, *People v. Castro*, 144 Misc. 2d 956, 978-9, 545 N.Y.S.2d 985, 999 (1989); *People v. Perry*, 586 So. 2d 242, 255 (Ala. 1991); *Polk v. State*, 612 So. 2d 381, 394 (Miss. 1992). Rule 417 draws from those opinions, but also reflects the committee's examination of current practices in forensic science.

The disclosures required by the rule can be crucial in any trial in which the discovery rules for criminal cases apply, and also in related post-trial and post-conviction proceedings (including a proceeding on a motion for DNA testing not available at the time of trial to establish actual innocence (725 ILCS 5/116-3)). Therefore, the rule requires production of information regarding DNA testing by the proponent of DNA evidence in any felony trial, and in all related post-trial or post-conviction proceedings. While the disclosures required under the rule encompass the technologies presently utilized (restriction fragment length polymorphism, polymerase chain reaction, short tandem repeats, etc.), production is not limited to those techniques. Because the rule provides no limitation upon the specific information or materials to be provided, it is designed to encompass future techniques that may be developed in the testing of DNA evidence.

Rules 418-29. Reserved

Part C. Trials

Rule 430. Trial of Incarcerated Defendant

An accused shall not be placed in restraint of any form unless there is a manifest need for restraint to protect the security of the court, the proceedings, or to prevent escape. Persons charged with a criminal offense are presumed innocent until otherwise proven guilty and are entitled to participate in their defense as free persons before the jury or bench. Any deviation from this right shall be based on evidence specifically considered by the trial court on a case-by-case basis. The determination of whether to impose a physical restraint shall be limited to trial proceedings in

which the defendant's innocence or guilt is to be determined, and does not apply to bond hearings or other instances where the defendant may be required to appear before the court prior to a trial being commenced. Once the trial judge becomes aware of restraints, prior to allowing the defendant to appear before the jury, he or she shall conduct a separate hearing on the record to investigate the need for such restraints. At such hearing, the trial court shall consider and shall make specific findings as to:

(1) the seriousness of the present charge against the defendant;

(2) defendant's temperament and character known to the trial court either by observation or by the testimony of witnesses;

(3) defendant's age and physical attributes;

(4) defendant's past criminal record and, more particularly, whether such record contains crimes of violence;

(5) defendant's past escapes, attempted escapes, or evidence of any present plan to escape;

(6) evidence of any threats made by defendant to harm others, cause a disturbance, or to be self-destructive;

(7) evidence of any risk of mob violence or of attempted revenge by others;

(8) evidence of any possibility of any attempt to rescue the defendant by others;

(9) size and mood of the audience;

(10) physical security of the courtroom, including the number of entrances and exits, the number of guards necessary to provide security, and the adequacy and availability of alternative security arrangements.

After allowing the defendant to be heard and after making specific findings, the trial judge shall balance these findings and impose the use of a restraint only where the need for restraint outweighs the defendant's right to be free from restraint.

Adopted March 22, 2010, effective July 1, 2010.

Commentary

(March 22, 2010)

This rule codifies the holdings in *People v. Boose*, 66 Ill. 2d 261 (1977), and *People v. Allen*, 222 Ill. 2d 340 (2006).

Rule 431. Voir Dire Examination

(a) The court shall conduct *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 at 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 of the charges. 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.

(b) The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that if a defendant does not testify it cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's decision not to testify when the defendant objects.

The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section.

Renumbered October 1, 1971; amended April 3, 1997, effective May 1, 1997; amended March 21, 2007, effective May 1, 2007; amended April 26, 2012, eff. July 1, 2012.

Committee Comments

The new language is intended to ensure compliance with the requirements of *People v. Zehr*, 103 Ill. 2d 472 (1984). It seeks to end the practice where the judge makes a broad statement of the applicable law followed by a general question concerning the juror's willingness to follow the law.

Rule 432. Opening Statements

Opening statements in criminal cases are governed by Rule 235.

Renumbered October 1, 1971.

Committee Comments

This rule is new, as is Rule 235, which this rule makes applicable to criminal cases.

Rule 433. Impeachment of Witnesses; Hostile Witnesses

The impeachment of witnesses and the examination of hostile witnesses in criminal cases is governed by Rule 238.

Adopted September 29, 1978, effective November 1, 1978; amended February 19, 1982, effective April 1, 1982.

Rule 434. Jury Selection

(a) Impaneling Juries. In criminal cases the parties shall pass upon and accept the jury in panels of four, commencing with the State, unless the court, in its discretion, directs otherwise,

and alternate jurors shall be passed upon separately.

(b) Names and Addresses of Prospective Jurors. Upon request, the parties shall be furnished with a list of prospective jurors with their addresses, if known.

(c) Challenging Prospective Jurors for Cause. Each party may challenge jurors for cause. If a prospective juror has a physical impairment, the court shall consider such prospective juror's ability to perceive and appreciate the evidence when considering a challenge for cause.

(d) Peremptory Challenges. A defendant tried alone shall be allowed seven peremptory challenges in a case in which the punishment may be imprisonment in the penitentiary, and five in all other cases; except that, in a single trial of more than one defendant, each defendant shall be allowed five peremptory challenges in a case in which the punishment may be imprisonment in the penitentiary, and three in all other cases. If several charges against a defendant or defendants are consolidated for trial, each defendant shall be allowed peremptory challenges upon one charge only, which single charge shall be the charge against that defendant authorizing the greatest maximum penalty. The State shall be allowed the same number of peremptory challenges as all of the defendants.

(e) Selection of Alternate Jurors. After the jury is impaneled and sworn the court may direct the selection of alternate jurors, who shall take the same oath as the regular jurors. Each party shall have one additional peremptory challenge for each alternate juror. If before the final submission of a cause a member of the jury dies or is discharged he shall be replaced by an alternate juror in the order of election.

Adopted February 19, 1982, effective April 1, 1982; amended March 27, 1985, effective May 1, 1985; amended Feb. 6, 2013, eff. immediately.

Rule 435. Reserved

Rule 436. Separation and Sequestration of Jury in Criminal Cases; Admonition by Court.

(a) In criminal cases, either before or after submission of the cause to the jury for determination, the trial court may, in its discretion, keep the jury together in the charge of an officer of the court, or the court may allow the jurors to separate temporarily outside the presence of a court officer, overnight, on weekends, on holidays, or in emergencies.

(b) The jurors shall, whether permitted to separate or kept in charge of officers, be admonished by the trial court that it is their duty (1) not to converse with anyone else on any subject connected with the trial until they are discharged; (2) not to knowingly read or listen to outside comments or news accounts of the procedure until they are discharged; (3) not to discuss among themselves any subject connected with the trial, or form or express any opinion on the cause until it is submitted to them for deliberation; and (4) not to view the place where the offense was allegedly committed.

Adopted May 20, 1997, effective July 1, 1997.

Committee Comments

This proposed rule is intended to allow jurors to go home for an evening, weekend, holiday, or emergency and dispense with the need to accommodate the jurors in a hotel overnight, even if the cause has been submitted to them for final deliberation. The Code of Criminal Procedure presently requires "an officer of the court *** to keep [jurors] together and prevent conversation between the jurors and others" (except interpreters), after final submission of the cause to the jury for determination. 725 ILCS 5/115-4. This proposed rule provides that in appropriate cases, jurors may separate temporarily after being admonished with regard to their duties. It does away with the blanket requirement that they be sequestered and guarded.

Rules 437-50. Reserved

Rule 451. Instructions

(a) Use of IPI Criminal Instructions; Requirements of Other Instructions. Whenever Illinois Pattern Jury Instructions, Criminal contains an instruction applicable in a criminal case, giving due consideration to the facts and the governing law, and the court determines that the jury should be instructed on the subject, the IPI Criminal instruction shall be used, unless the court determines that it does not accurately state the law. The most current version of the IPI Criminal instructions is maintained on the Supreme Court website. Whenever IPI Criminal does not contain an instruction on a subject on which the court determines that the jury should be instructed, the instruction given on 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 Instructions." 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) Section 2-1107 of the Code of Civil Procedure to Govern. Except as otherwise provided in these rules, instructions in criminal cases shall be tendered, settled, and given in accordance with section 2-1107 of the Code of Civil Procedure, but substantial defects are not waived by failure to make timely objections thereto if the interests of justice require. The court shall instruct the jury after the arguments are completed, or, in its discretion, at the close of all the evidence.

(d) Procedure. The court shall be provided an original and a copy of each instruction, and a copy shall be delivered to each 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 Criminal No. _____" or "IPI Criminal No. _____ Modified"

or "Not in IPI Criminal"

as the case may be. All objections made at the conference and the rulings thereon shall be shown in the report of proceedings.

(e) 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 issue of substantive law applicable to the case, including, but not limited to, the elements of the offense. When requested by the defendant, the court may instruct the jury on the elements of an affirmative defense. Nothing in this rule is intended to eliminate the giving of written instructions at the close of the trial in accord with paragraph (c).

(f) Instructions During Trial. Nothing in the rule is intended to restrict the court's authority to give any appropriate instruction during the course of the trial.

(g) Proceedings When an Enhanced Sentence is Sought. When the State intends, for the purpose of sentencing, to rely on one or more sentencing enhancement factors which are subject to the notice and proof requirements of section lll-3(c-5) of the Code of Criminal Procedure, the court may, within its discretion, conduct a unitary trial through verdict on the issue of guilt and on the issue of whether a sentencing enhancement factor exists. The court may also, within its discretion, upon motion of a party, conduct a bifurcated trial. In deciding whether to conduct such a bifurcated trial, the court must first hold a pretrial hearing to determine if proof of the sentencing enhancement factor is not relevant to the question of guilt or if undue prejudice outweighs the factor's probative value. Such bifurcated trial shall be conducted subject to the following:

(1) The court shall first conduct a trial through verdict on the issue of guilt under the procedures applicable to trials in other cases.

(2) If a guilty verdict is rendered, the court shall then conduct a separate proceeding before the same jury, or before the court if a jury was waived at trial or is waived for purposes of the separate proceeding. This separate proceeding shall be confined to the issue of whether the sentencing enhancement factor exists. The order in which the parties may present evidence and argument and the rules governing admission of evidence shall be the same as at trial, with the burden remaining on the State to prove the factor beyond a reasonable doubt. After the evidence is closed, the submission and giving of instructions shall proceed in accordance with paragraphs (a), (b), (c) and (d) of this rule.

(3) The court may enter a directed verdict or judgment notwithstanding the verdict respecting any fact at issue in the separate proceeding.

Amended June 19, 1968, effective January 1, 1969; amended February 19, 1982, effective April 1, 1982; amended May 28, 1982, effective July 1, 1982; amended May 20, 1997, effective July 1, 1997; amended February 10, 2006, effective July 1, 2006; amended Feb. 6, 2013, eff. immediately; amended Apr. 8, 2013, eff. immediately.

Committee Comments

(February 10, 2006)

Paragraph (g)

In response to the Supreme Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000), the Illinois legislature adopted Illinois Code of Criminal Procedure section 111-3(c-5) (725 ILCS 5/111-3(c-5)), which sets notice and proof requirements for sentencing enhancement factors in nondeath penalty cases. However, this section does not specify how the sentencing enhancements are to be tried when the trier of fact is a jury. Rule 451(a) provides a basis for trial courts to utilize special interrogatories when the sentencing enhancement factor is to be proven during a unitary trial.

The Supreme Court Committee on Jury Instructions in Criminal Cases recommended the adoption of a rule which would provide that bifurcated trials as well as unitary trials are authorized, and that trial courts have discretion in deciding which to conduct.

Because bifurcating a trial generally causes additional inconvenience to the jury, the witnesses, and/or the parties, and causes additional cost to the parties and/or the taxpayers, paragraph (g) makes unitary trials the presumptive option. Before a court orders a bifurcated trial, the court must find that having a unitary trial might cause prejudice and that this risk outweighs the additional difficulties associated with a bifurcated trial. Paragraph (g) does not apply when the court serves as trier of fact on sentencing enhancement factors. Whether to bifurcate in that circumstance involves different considerations.

Committee Comments

This amendment gives the trial court the option of formally instructing the jury at the close of the evidence prior to closing arguments. It also expressly authorizes the trial court to orally instruct the jury prior to opening statements concerning cautionary and preliminary matters and on key issues of substantive law, such as the elements of the offense or of an affirmative defense. The amendments also recognize that it may become necessary for the trial court to give appropriate instructions during the course of the trial to guide the jurors in their consideration of the evidence.

Rule 452. Preparation of Sentencing Orders.

At the time of sentencing in a criminal case, the court shall enter a written order imposing the sentence and all applicable fines, fees, assessments, and costs against the defendant and specifying applicable credits. The State shall draft such order and present the order for review by defendant or, if defendant is represented, by defense counsel, before submitting it to the court.

Adopted Feb. 26, 2019, eff. March 1, 2019.

Rules 453-70. Reserved

Part D. Post-Conviction Proceedings

Rule 471. Transcripts for Poor Persons Bringing Post-Conviction Proceedings

If a petition filed under the provisions of article 122 of the Code of Criminal Procedure of 1963, dealing with post-conviction hearings, alleges that the petitioner is unable to pay the costs of the proceeding, the trial court may order that the petitioner be permitted to proceed as a poor person and order a transcript of the proceedings resulting in the conviction delivered to petitioner in accordance with paragraph (b) of Rule 607.

Committee Comments

This is paragraph (1) of former Rule 27-1 with necessary minor changes but no changes of substance.

Rule 472. Correction of Certain Errors in Sentencing.

(a) In criminal cases, the circuit court retains jurisdiction to correct the following sentencing errors at any time following judgment and after notice to the parties, including during the pendency of an appeal, on the court's own motion, or on motion of any party:

(1) Errors in the imposition or calculation of fines, fees, assessments, or costs;

(2) Errors in the application of *per diem* credit against fines;

(3) Errors in the calculation of presentence custody credit; and

(4) Clerical errors in the written sentencing order or other part of the record resulting in a discrepancy between the record and the actual judgment of the court.

(b) Where a circuit court's judgment pursuant to this rule is entered more than 30 days after the final judgment, the judgment constitutes a final judgment on a justiciable matter and is subject to appeal in accordance with Supreme Court Rule 303.

(c) No appeal may be taken by a party from a judgment of conviction on the ground of any sentencing error specified above unless such alleged error has first been raised in the circuit court. When a post-judgment motion has been filed by a party pursuant to this rule, any claim of error not raised in that motion shall be deemed forfeited.

(d) If a motion is filed or judgment pursuant to this rule is entered after a prior notice of appeal has been filed, and said appeal remains pending, the pending appeal shall not be stayed. Any appeal from a judgment entered pursuant to this rule shall be consolidated with the pending appeal.

(e) In all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule.

Adopted Feb. 26, 2019, eff. March 1, 2019; amended May 17, 2019, eff. immediately.

Rules 473-500. Reserved

Article V. Rules on Trial Court Proceedings in Traffic and Conservation Offenses, Ordinance Offenses, Petty Offenses, Certain Misdemeanors, and Civil Law Violations—Bail Schedules

Part A. General

Rule 501. Definitions

(a) Bond Certificates. Bail security documents which also guarantee payment of judgments for fines, penalties, assessments, and costs, not to exceed the amount specified in Schedule 12, as provided in section 15-60 of the Criminal and Traffic Assessment Act (705 ILCS 135/15-60) for any single offense or $500 for multiple offenses arising out of the same occurrence (auto bond certificates), or not to exceed $500 for any single offense covered by Rule 526(b)(1) (truck bond certificates), which are issued or guaranteed, in counties other than Cook, by companies or membership associations authorized to do so by the Director of Insurance, State of Illinois, under regulations issued by this court. (Note: Copies of these regulations may be obtained by writing to: Director, Administrative Office of the Illinois Courts, 3101 Old Jacksonville Road, Springfield, IL 62704-6488.) The privilege of issuing bond certificates for use in Cook County shall be governed by rule of the Circuit Court of Cook County. (Note: Copies of the Cook County rule may be obtained by writing to: Office of the Chief Judge, Richard J. Daley Center, 50 W. Washington St., Chicago, IL 60602.)

(b) Cash or Cash Bail. United States currency; transfer of United States currency by means of credit cards, debit cards, or electronic fund transfer; traveler's checks issued by major banks or express companies which, alone or in combination with currency, total the exact amount required to be deposited as bail; and negotiable drafts on major credit card companies, under conditions approved by the Administrative Director.

(c) Conservation Offense. Any case charging a violation listed below, except any charge punishable upon conviction by imprisonment in the penitentiary:

(1) The Fish and Aquatic Life Code, as amended (515 ILCS 5/1-1 *et seq.*);

(2) The Wildlife Code, as amended (520 ILCS 5/1.1 *et seq.*);

(3) The Boat Registration and Safety Act, as amended (625 ILCS 45/1-1 *et seq.*);

(4) The Park District Code, as amended (70 ILCS 1205/1-1 *et seq.*);

(5) The Chicago Park District Act, as amended (70 ILCS 1505/ 0.01 *et seq.*);

(6) The State Parks Act, as amended (20 ILCS 835/ 0.01 *et seq.*);

(7) The State Forest Act, as amended (525 ILCS 40/ 0.01 *et seq.*);

(8) The Forest Fire Protection District Act, as amended (425 ILCS 40/ 0.01 *et seq.*);

(9) The Snowmobile Registration and Safety Act, as amended (625 ILCS 40/1-1 *et seq.*);

(10) The Endangered Species Protection Act, as amended (520 ILCS 10/1 *et seq.*);

(11) The Forest Products Transportation Act, as amended (225 ILCS 740/1 *et seq.*);

(12) The Timber Buyers Licensing Act, as amended (225 ILCS 735/1 *et seq.*);

(13) The Downstate Forest Preserve District Act, as amended (70 ILCS 805/ 0.001 *et seq.*);

(14) The Exotic Weed Act, as amended (525 ILCS 10/1 *et seq.*);

(15) The Ginseng Harvesting Act, as amended (525 ILCS 20/ 0.01 *et seq.*);

(16) The Cave Protection Act, as amended (525 ILCS 5/1 *et seq.*);

(17) Any regulations, proclamations or ordinances adopted pursuant to any code or act named in this Rule 501(c);

(18) Ordinances adopted pursuant to the Counties Code for the acquisition of property for parks or recreational areas (55 ILCS 5/5-1005(18));

(19) The Recreational Trails of Illinois Act, as amended (20 ILCS 862/1 *et seq.*);

(20) The Herptiles-Herps Act, as amended (510 ILCS 68/1-1 *et seq.*).

(d) Driver's License. A current driver's license or temporary visitor's driver's license issued by the Secretary of State of Illinois. However, restricted driving permits, monitoring device driving permits, instruction permits, probationary licenses or temporary licenses issued under chapter 6 of the Illinois Vehicle Code, as amended (625 ILCS 5/6-100 *et seq.*) shall not be accepted in lieu of or in addition to bail amounts established in Rule 526.

(e) Unit of Local Government. Any county, municipality, township, special district, or unit designated as a unit of local government by law.

(f) Traffic Offense.

(1) Any case which charges a violation of any statute, ordinance or regulation relating to the operation or use of motor vehicles, the use of streets and highways by pedestrians or the operation of any other wheeled or tracked vehicle. Traffic cases are classified as follows:

(i) "Major Traffic Offense" means a traffic offense under the Toll Highway Act (605 ILCS 10/1 *et seq.*), Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.*), or a similar provision of a local ordinance other than a petty offense or business offense that is punishable by a term of imprisonment of less than one year.

(ii) "Minor Traffic Offense" means a petty offense or business offense under the Toll Highway Act (605 ILCS 10/1 *et seq.*), Child Passenger Protection Act (625 ILCS 25/1 *et seq.*), Illinois Vehicle Code (625 ILCS 5/1-100 *et seq.*), or a similar provision of a local ordinance.

(2) A traffic offense does not include a case in which a ticket was served by "tie-on," "hang-on," or "appended" methods and cases charging violations of:

(i) Article I of chapter 4 of the Illinois Vehicle Code, as amended (anti-theft laws) (625 ILCS 5/4-100 *et seq.*);

(ii) Any charge punishable upon conviction by imprisonment in the penitentiary;

(iii) "Jay-walking" ordinances of any unit of local government;

(iv) Any conservation offense (see Rule 501(c)).

(g) Promise to Comply. An option allowing release from custody without bail following arrests on view for petty traffic offenses, subject to the terms of the Uniform Citation and Complaint (see 625 ILCS 5/6-308).

(h) Individual Bond. Bonds authorized without security for persons arrested for or charged with offenses covered by Rules 526, 527 and 528 who are unable to secure release from custody under these rules (see Rule 553(d)).

Amended effective October 7, 1970; amended January 31, 1972, effective March 1, 1972; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended December 22, 1981, effective January 15, 1982; amended April 27, 1984, effective July 1, 1984; amended March 27, 1985, effective May 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 19, 1989, effective August 1, 1989; amended December 7, 1990, effective January 1, 1991; amended June 12, 1992, effective July 1, 1992; amended May 24, 1995, effective January 1, 1996; amended September 30, 2002, effective immediately; amended June 11, 2009, effective immediately; amended August 6, 2010, effective September 15, 2010; amended Dec. 12, 2013, eff. Jan. 1, 2014; amended June 11, 2014, eff. July 1, 2014; amended December 30, 2014, eff. Jan. 1, 2015; amended Oct. 15, 2015, eff. immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Dec. 10, 2018, eff. Jan. 1, 2019; amended Mar. 8, 2019, eff. July 1, 2019; amended Feb. 6, 2020, eff. Mar. 1, 2020; amended June 9, 2020, eff. July 1, 2020.

Rule 502. Reserved

Rule 503. Multiple Charges under These Rules

(a) Amount of Bail-Hearing Date. Police officers should refrain from issuing multiple citations for offenses arising out of the same occurrence. A person arrested and charged with more than one offense arising out of the same occurrence when the bail is established for each such offense under Rule 526, 527 or 528 shall be released from custody as follows:

(1) If bail for each such offense is established by Rule 526, and the accused is eligible for release on each charge by a promise to comply pursuant to section 6-308 of the Illinois Vehicle Code, as amended (625 ILCS 5/6-308), no court appearance shall be required if all such charges are satisfied under Rule 529.

(2) In all other cases, the accused shall be released from custody after posting bail on the charge for which the highest bail is required, and, except as provided below, a court appearance shall be required on each charge. Whether a court appearance will be required for any other offenses charged at the same time as an offense requiring bail under Rule 526(b)(1) will be determined without regard to such truck violations. A separate bail shall be required for each case involving truck violations under Rule 526(b)(1) or similar municipal ordinances, and all such charges may be satisfied without a court appearance, if all such charges are satisfied under Rule 531.

(3) No court appearance shall be required under this rule where all charges are traffic offenses which may be satisfied without a court appearance under Rule 529, the separate bails

required for all such charges do not exceed $500, and the accused has deposited an approved bond certificate in lieu of bail.

All such charges, whenever practicable, should be set for hearing on the same day in the same court, to be disposed of at the same time (see Rule 501(b) for definition of "Cash Bail").

(b) New Bail—Application of Bail and Return of Balance. After final disposition of a charge for which bail was posted, the court shall set new bail in a single amount to cover any concurrent charges which may be continued for further hearing at a future date. The clerk may apply any cash or security originally posted as bail to payment of any fine, penalties, assessments, and costs due on the charge for which bail was originally posted or any other charge disposed of at the same time, but shall return any remaining balance to the accused and shall not retain the balance to apply, in whole or in part, to any new bail set by the court, without the consent of the accused.

Amended effective October 7, 1970; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended December 22, 1981, effective January 15, 1982; amended April 27, 1984, effective July 1, 1984; amended June 26, 1987, effective August 1, 1987; amended June 19, 1989, effective August 1, 1989; amended December 7, 1990, effective January 1, 1991; amended June 12, 1992, effective July 1, 1992; amended September 30, 2002, effective immediately; amended June 11, 2009, effective immediately; amended August 6, 2010, effective September 15, 2010; amended December 30, 2014, eff. Jan. 1, 2015; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended June 8, 2018, eff. July 1, 2018; amended Dec. 10, 2018, eff. Jan. 1, 2019; amended Mar. 8, 2019, eff. July 1, 2019; amended July 20, 2021, eff. immediately.

Rule 504. Appearance Date

The date set by the arresting officer or the clerk of the circuit court for an accused's first appearance in court shall be not less than 14 days but within 60 days after the date of the arrest, whenever practicable. It is the policy of this court that, if the arresting agency has been exempted from the requirements of Rule 505, an accused who appears and pleads "not guilty" to an alleged traffic or conservation offense punishable by fine only should be granted a trial on the merits on the appearance date or, if the accused demands a trial by jury, within a reasonable time thereafter. A failure to appear on the first appearance date by an arresting officer from a Rule 505 exempted agency shall, in and of itself, not normally be considered good cause for a continuance.

Amended effective October 7, 1970; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended December 22, 1981, effective January 15, 1982; amended November 21, 1988, effective December 1, 1988; amended June 19, 1989, effective August 1, 1989; amended May 24, 1995, effective January 1, 1996.

Rule 505. Notice to Accused

When issuing a Uniform Citation and Complaint, a conservation complaint or a Notice to Appear in lieu of either, the officer shall also issue a written notice to the accused in substantially

the following form:

AVOID MULTIPLE COURT APPEARANCES

If you intend to plead "not guilty" to this charge, or if, in addition, you intend to demand a trial by jury, so notify the clerk of the court at least 10 days (excluding Saturdays, Sundays or holidays) before the day set for your appearance. A new appearance date will be set, and arrangements will be made to have the arresting officer present on that new date. Failure to notify the clerk of either your intention to plead "not guilty" or your intention to demand a jury trial may result in your having to return to court, if you plead "not guilty" on the date originally set for your court appearance.

Upon timely receipt of notice that the accused intends to plead "not guilty," the clerk shall set a new appearance date not less than 7 days nor more than 60 days after the original appearance date set by the arresting officer or the clerk of the circuit court, and notify all parties of the new date and the time for appearance. If the accused demands a trial by jury, the trial shall be scheduled within a reasonable period. In order to invoke the right to a speedy trial, the accused if not in custody must file an appropriate, separate demand, as provided in section 103—5 of the Code of Criminal Procedure of 1963, as amended (725 ILCS 5/103—5). The proper prosecuting attorney shall be served with such separate written demand for speedy trial. If the accused fails to notify the clerk as provided above, the arresting officer's failure to appear on the date originally set for appearance may be considered good cause for a continuance. Any state agency or any unit of local government desiring to be exempt from the requirements of this Rule 505 may apply to the Conference of Chief Circuit Judges for an exemption.

Amended effective October 7, 1970; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended December 22, 1981, effective January 15, 1982; amended April 27, 1984, effective July 1, 1984; amended June 26, 1987, effective August 1, 1987; amended June 19, 1989, effective August 1, 1989; amended May 24, 1995, effective January 1, 1996.

Rules 506-25. Reserved

Part B. Bail Schedules

Rule 526. Bail Schedule—Traffic Offenses

(a) Bail in Minor Traffic Offenses. Unless released on a promise to comply and except as provided in paragraphs (b) and (d) of this rule a person arrested for a minor traffic offense and personally served by the arresting officer with a Citation and Complaint shall post bail in the amount equal to the Schedule 12 assessment, as provided in section 15-60 of the Criminal and Traffic Assessment Act (705 ILCS 135/15-60), in one of the following ways: (1) by posting cash

bail (see Rule 501(b) for definition of "Cash Bail"); or (2) by depositing, in lieu of such amount, an approved bond certificate; or (3) by depositing, in lieu of such amount, a current Illinois driver's license.

(b) Bail in Certain Truck Offenses.

(1) Persons charged with a violation of section 3-401(d) or 15-111 of the Illinois Vehicle Code, as amended (truck overweight) (625 ILCS 5/3-401(d) or 5/15-111), charged with a violation of section 15-112(e) of the Illinois Vehicle Code, as amended (gross weight) (625 ILCS 5/15-112(e)), or charged with a violation punishable by fine pursuant to sections 15-113.1, 15-113.2 or 15-113.3 of the Illinois Vehicle Code, as amended (permit moves) (625 ILCS 5/15-113.1 *et seq.*), unless released on a promise to comply, shall post cash bail in an amount equal to the amount of the minimum fine fixed by statute, plus an amount equal to the Schedule 10.5 assessment, as provided in section 15-52 of the Criminal and Traffic Assessment Act (705 ILCS 135/15-52) (see Rule 501(b) for definition of "Cash Bail"). The accused may, in lieu of cash bail, deposit a money order issued by a money transfer service company which has been approved by the Administrative Director under regulations issued by this court. The money order shall be made payable to the clerk of the circuit court of the county in which the violation occurred. When the bail for any offense hereunder does not exceed $500, the accused may, at his or her option, deposit a truck bond certificate in lieu of bail.

(2) Persons charged with violating section 15-112(g) of the Illinois Vehicle Code, as amended, by refusing to stop and submit a vehicle and load to weighing after being directed to do so by an officer, or with violating section 15-112(g) by removing all or part of the load prior to weighing shall post bail in the amount of $2,000 (625 ILCS 5/15-112(g)).

(c) Bail in Major Traffic Offenses. Except as provided in paragraph (e) of this rule, persons charged with a major traffic offense shall post bail in the amount of $2,500 with the exception of the following violations:

ILCS	Description	Bail
(1) 625 ILCS 5/11-501	Misdemeanor Driving Under Influence of Alcohol or Drugs or with 0.08 or more Blood- or Breath Alcohol Concentration	$3,000
(2) 625 ILCS 5/11-506	Street Racing	$3,000

(d) Bail in Other Traffic Offenses (Vehicle Title & Registration Law). Except as provided in paragraph (e) of this rule, persons charged with violations of the following sections of the Illinois Vehicle Code shall post bail in the amount specified:

ILCS	Description	Bail
(1) 625 ILCS 5/3-707	Operating Without Insurance	$2,000

(2) 625 ILCS 5/3-708	Operating when Registration Suspended for Non-insurance	$3,000

(e) Driver's License in Lieu of or in Addition to Bail. An accused who has a valid Illinois driver's license may deposit his or her driver's license in lieu of the bail specified in Rule 526(c). In lieu of posting the cash amount specified in subparagraphs (1) and (2) of Rule 526(c) or subparagraph (2) of Rule 526(d), an accused must post $1,000 bail and his or her current Illinois driver's license. Persons who do not possess a valid Illinois driver's license shall post bail in the amounts specified in Rule 526(c) or 526(d).

(f) Bail for Traffic Offenses Defined by Ordinance. Bail for traffic offenses defined by any ordinances of any unit of local government which are similar to those described in this Rule 526 shall be the same amounts as provided for in this rule.

Amended effective October 7, 1970; amended January 31, 1972, effective March 1, 1972; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended September 29, 1978, effective November 1, 1978; amended September 20, 1979, effective October 15, 1979; amended December 22, 1981, effective January 15, 1982; amended April 27, 1984, effective July 1, 1984; amended March 27, 1985, effective May 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 19, 1989, effective August 1, 1989; amended January 11, 1990, effective immediately; amended December 7, 1990, effective January 1, 1991; amended June 12, 1992, effective July 1, 1992; amended September 27, 1993, effective October 1, 1993; amended April 11, 2000, effective immediately; amended September 30, 2002, effective immediately; amended December 5, 2003, effective immediately; amended May 30, 2008, effective immediately; amended June 11, 2009, effective immediately; amended June 3, 2010, effective September 15, 2010; amended December 7, 2011, effective immediately; amended Dec. 12, 2013, eff. Jan. 1, 2014; amended December 30, 2014, eff. Jan. 1, 2015; amended Dec. 10, 2018, eff. Jan. 1, 2019; amended Mar. 8, 2019, eff. July 1, 2019; amended Feb. 6, 2020, eff. Mar. 1, 2020; amended June 9, 2020, eff. July 1, 2020.

Rule 527. Bail Schedule—Conservation Offenses

(a) General. Except as provided in paragraph (b) of this Rule 527, a person arrested for a conservation offense classified as petty, business, Class B misdemeanor, or Class C misdemeanor and personally served by the arresting officer with a conservation complaint shall post cash bail in the amount equal to the Schedule 11 assessment as provided in section 15-55 of the Criminal and Traffic Assessment Act (705 ILCS 135/15-55) (see Rule 501(b) for definition of "Cash Bail").

(b) Bail for Class A Misdemeanors. Persons arrested for any conservation offense classified as a Class A misdemeanor and personally served by the arresting officer with a conservation complaint shall post bail in the amount of $2,500, with the exception of the following violations:

ILCS	Description	Bail
625 ILCS 45/5-16(A)	Operating a Motorboat Under the Influence of Alcohol or Drugs	$3,000
625 ILCS 40/5-7(a)	Operating Snowmobile Under the Influence of Alcohol or	$3,000

Amended effective October 7, 1970; amended January 31, 1972, effective March 1, 1972; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended December 22, 1981, effective January 15, 1982; amended April 27, 1984, effective July 1, 1984; amended March 27, 1985, effective May 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 19, 1989, effective August 1, 1989; amended June 12, 1992, effective July 1, 1992; amended September 30, 2002, effective immediately; amended December 6, 2006, effective immediately; amended June 11, 2009, effective immediately; amended June 3, 2010, effective September 15, 2010; amended Dec. 12, 2013, eff. Jan. 1, 2014; amended Mar. 8, 2019, eff. July 1, 2019.

Rule 528. Bail Schedule-Ordinance Offenses, Petty Offenses, Business Offenses and Certain Misdemeanors

(a) Offenses Punishable by Fine Only. Bail for a petty, business, or nontraffic/nonconservation offenses, including ordinance violations, punishable only by a fine shall be $100.

(b) Certain Other Offenses. Except as provided in paragraph (c) of this Rule 528, bail for any other offenses, including violation of any ordinance of any unit of local government (other than traffic or conservation offenses) punishable by fine or imprisonment in a penal institution other than the penitentiary, or both, shall be $100.

(c) Domestic Violence Offenses. No bail is established under these rules as provided in section 110-15 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-15) for the offense of domestic battery (720 ILCS 5/12-3.2), a violation of an order of protection (720 ILCS 5/12-30), or any similar violation of a local ordinance. Bail for these offenses shall be set by the court pursuant to statute.

Amended effective October 7, 1970; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended December 22, 1981, effective January 15, 1982; amended June 12, 1992, effective July 1, 1992; amended March 19, 1997, effective April 15, 1997; amended October 22, 1999, effective December 1, 1999; amended June 3, 2010, effective September 15, 2010; amended Mar. 8, 2019, eff. July 1, 2019; amended Feb. 6, 2020, eff. Mar. 1, 2020.

Part C. Fines, Penalties and Costs—10% Deposit Statute

Rule 529. Written Pleas of Guilty in Minor Traffic Offenses

(a) Minor Traffic Offenses. All minor traffic offenses, except those requiring a court

appearance under Rule 551 and those involving offenses set out in Rule 526(b)(1), may be satisfied without a court appearance by a written plea of guilty, including electronic pleas as authorized by the Supreme Court, and payment of an amount equal to the Schedule 12 assessment, as provided in section 15-60 of the Criminal and Traffic Assessment Act (705 ILCS 135/15-60). If the defendant fails to satisfy the charges and fails to appear at the date set for appearance, the court shall address the charges in accordance with Rule 556. Except as provided in paragraph (b) of this Rule 529, no other fines, fees, penalties, assessments, or costs shall be assessed in any case which is disposed of on a written plea of guilty without a court appearance under this Rule 529.

(a-1) Multiple Citations Issued. Per the Act, only one scheduled assessment shall be applied regardless of the number of citations issued and prosecuted together. The schedule applicable to the highest classified offense shall be imposed. Where two or more offenses of the same class are prosecuted together, the higher assessment shall be imposed.

(b) Supervision on Written Pleas of Guilty. In counties designated by the Conference of Chief Circuit Judges, the circuit court may by rule or order authorize the entry of an order of supervision under section 5-6-3.1 of the Unified Code of Corrections (730 ILCS 5/5-6-3.1), for a minor traffic offense satisfied pursuant to paragraph (a) of this Rule 529. This provision does not apply where multiple offenses are charged arising out of the same occurrence. Such circuit court rule or order may include but does not require a program by which the accused, upon payment of an amount equal to the Schedule 12 assessment, as provided in section 15-60 of the Criminal and Traffic Assessment Act (705 ILCS 135/15-60), agrees to attend and successfully complete a traffic safety program approved by the court under standards set by the Conference. The accused shall be responsible for payment of any traffic safety program fees. If the accused fails to file a certificate of successful completion on or before the termination date of the supervision order, the supervision shall be summarily revoked and conviction entered. A traffic safety program provider may be authorized to file a certificate of completion on behalf of the accused; however, it is the responsibility of the accused to ensure that the certificate is timely filed. Any county designated by the Conference pursuant to this rule may opt-out of this rule upon notification to the Conference by the chief judge of the circuit and rescinding any rule or order entered to establish supervision on written pleas of guilty.

(c) The provisions of Supreme Court Rule 402 relating to pleas of guilty do not apply in cases where a defendant enters a guilty plea under this rule. The clerk of the circuit court shall disburse the monies collected under this Rule 529 in accordance with the Schedule 12 assessment, as provided in section 15-60 of the Criminal and Traffic Assessment Act (705 ILCS 135/15-60).

Amended effective October 7, 1970; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended September 20, 1979, effective October 15, 1979; amended December 22, 1981, effective January 15, 1982; amended April 27, 1984, effective July 1, 1984; amended March 27, 1985, effective May 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 19, 1989, effective August 1, 1989; amended December 20, 1991, effective January 1, 1992; amended June 12, 1992, effective July 1, 1992; amended January 20, 1993, effective immediately; amended May 24, 1995, effective January 1, 1996; amended April 1, 1998, effective immediately; amended March 16, 2001, effective immediately; amended December 5,

2003, effective January 1, 2004; amended August 6, 2010, effective September 15, 2010; amended December 7, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Mar. 8, 2019, eff. July 1, 2019; amended Dec. 9, 2020, eff. Jan. 1, 2021; amended July 20, 2021, eff. immediately.

Committee Comments
(December 5, 2003)

Under present Supreme Court Rule 529 (Fines, Penalties and Costs on Written Pleas of Guilty in Minor Traffic and Conservation Offenses), cash bail is distributed on pleas of guilty, where a court appearance is not required, by deducting applicable costs, including clerk's fees (705 ILCS 105/27/1a, 27.2 or 27.2a, as the case may be), Automation Fee (705 ILCS 105/27.3a), Document Storage Fee (705 ILCS 105/27.3c) and Fee to Finance the Court System (55 ILCS 5/5-110). The balance is then distributed by the clerk to the Traffic and Criminal Conviction Surcharge (TCCS) and LEADS Maintenance Fund (730 ILCS 5/5-9-1(c)), Driver's Education Fund (Driver's Ed) (625 ILCS 5/16-104a), Violent Crime Assistance Fund (VCVA) (725 ILCS 240/10(b)) (VCVA is not assessed in speeding violation cases), Trauma Center Fund (625 ILCS 5/16-104(b)), if applicable, and the entity entitled to receive the fine.

The proposed amendments to Rules 529(a) and 529(b) would exclude electronic pleas and eliminate itemized distribution by the clerk of the funds noted above and, instead, after first deducting the Automation Fee and Document Storage Fee, distribute the bail for traffic offenses along the present line of section 27.6 of the Clerk's of Court Act (705 ILCS 105/27.6) in the following percentages: 44.5% to the entity entitled to receive the fine, 38.675% to the county's general fund, and 16.825% to the state Treasurer. Under Rule 529(b), since conservation offenses are not included under section 27.6, bail would be distributed as follows: 67% to the entity entitled to receive the fine, 16.175% to the county's general fund, and 16.825% to the state Treasurer, which is similar to the current disbursal of these amounts.

The $5 Fee to Finance the Court System (55 ILCS 5/5-1101) is distributed to the county's general fund under the present rule on an itemized basis, and would be included in the 38.675% disbursed to the county's general fund under proposed amended Rule 529(a).

The Court Security Fee (55 ILCS 5/5-1103) is not included either in present Rule 529, or the proposed amendment, since the statute requires a court appearance by the violator before the assessment of this fee.

By way of background, the percentage distribution formula under 705 ILCS 105/27.6 became effective on January 1, 1993, and has been adopted for the assessment fo fines, fees, costs and forfeitures in 10 counties throughout the state, including Cook County, for violations of the Vehicle Code.

Supreme Court Rule 526 (Bail Schedules-Traffic Offenses), Rule 527 (Bail Schedule-Conservation Offenses) and Rule 529 (Fines, Penalties and Costs on Written Pleas of Guilty in Minor Traffic and Conservation Offenses), among others, were amended on June 12, 1992, effective July 1, 1992, increasing bail in minor traffic cases from $50 to $75 and from $75 to $95

since the amount of fines received by the municipalities was being reduced by legislative "add-ons."

The committee does not believe Supreme Court Rule 529, in its present form, provides adequate direction to the circuit clerks in the distribution of funds under this rule. For instance, a problem arises in the calculation of the TCCS/LEADS Fund which requires the court to assess an additional penalty of $5 for each $40, or fraction thereof, of fine imposed, and the Driver's Ed Fund and VCVA, which requires the court to assess an additional penalty of $4 for each $40, or fraction thereof, of fine imposed. This, by necessity, involves the use of a multiplier. To arrive at the multiplier, the clerk must divide the fine by 40 when a fine plus costs is assessed, or follow the method prescribed under 730 ILCS 5/5-9-1(c) (TCCS/LEADS Maintenance Fund), 725 ILCS 240/10(b) (VCVA) and 625 ILCS 5/16-104a (Driver's Ed) when the court levies "a gross amount for fine, costs, fees and penalties." The committee concluded that an assessment under Rule 529 was not a "levy of a gross amount."

Under the current rule, the fine is represented as the "balance of the bail," and is the amount remaining after deducting various costs and fees. Therefore, since the court has not assessed a specific fine, the clerk has no exact amount to divide by 40 and is left to reach his or her own conclusion as the correct multiplier. In certain instances if the clerk computes these additional penalties with a multiplier of 1, it results in a fine which is greater that $40; if a multiple of 2 is used, it results in a fine of less than $40.

Chief Justice Benjamin K. Miller, in the Supreme Court's Annual Report to the Legislature dated January 31, 1991, discussed the "plethora of user fees and surcharges enacted by the General Assembly," then concluded that "[t]he complexity of the structure of various charges is such that they are not uniform, and are confusing. It has been impossible for the court system to apply the charge in a consistent and coherent manner."

The Article V Committee agrees, and in order to enhance uniformity and consistency throughout the state in the disbursement of fines, costs, penalties and forfeitures under Rule 529, it recommends a percentage disbursal of funds upon pleas of guilty in traffic and conservation cases which are satisfied without a court appearance by the violator. The committee believes this disbursal, which would be made monthly to all entities, would be fair to all concerned, increase the efficiency of the clerks, and substantially reduce the possibility of error.

As an example of the continuing dilemma facing the circuit clerks, Public Act 93-32, effective June 20, 2003, directs that an "additional penalty fo $4.00 shall be assessed by the court imposing a fine (upon a plea or finding of guilty in all traffic, criminal, conservation and local ordinance cases)." The funds are to be remitted by the circuit clerk to the state Treasurer and deposited in the Traffic and Criminal Surcharge Fund. The committee concluded the additional penalty under this act could not be collected or distributed und Rules 529 and 556 since the total amount of bail was already exhausted by other fines, fees and costs and the act itself provides that the additional penalty "shall not reduce or affect the distribution of any other fine, costs, fees and penalties." The committee felt the only way to obtain the funds required under Public Act 93-32 would be: (1) order the offender to appear in court for the assessment of the $4 additional penalty, or (2) increase the amount of bail under Rule 526. It considered the first option to be counterproductive. As to the

second option, the committee noted Justice Heiple's dissent when bail was increased under Rule 526 in 1992. In his dissent, he stated, "[W]hile the original purpose of enacting and enforcing highway traffic laws was public safety, this purpose has, in substantial measure, given way to the purpose of earning bounty revenues of government. Any bail figure, to the extent it exceeds the amount necessary to insure the presence of the defendant in court, in a misuse and abuse of the bail process." The committee, after discussion, is not recommending the increase of bail under Rules 526 and 527.

The committee was also concerned about the 10 counties which distribute gross fines and costs pursuant to 705 ILCS 105/27.6, since this distribution would include money collected by the circuit clerk as a result of forfeiture of bonds, ex parte judgments or guilty pleas pursuant to Rule 529. Public Act 93-32 directs the court to assess an additional penalty; section 27.6 provides that "(f) or offenses subject to this section, judges shall impose one total sum of money payable for violations. The circuit clerk may add on no additional amounts except for amounts that are required by Sections 27.3a and 27.3c of this Act." The inconsistency between the two acts places the circuit clerks in a quandary, particularly in those counties operating under section 27.6.

The committee has recommended the circuit clerks be given a clear and definite direction concerning distribution of funds under this rule and believes the proposed amendment would provide that direction.

Rule 530. Written Pleas of Guilty in Conservation Offenses

(a) Conservation Offenses. Conservation offenses, as defined in section 1-5 of the Criminal and Traffic Assessment Act (705 ILCS 135/1-5), for which cash bail is required under Rule 527(a), may be satisfied without a court appearance by a written plea of guilty, including electronic pleas as authorized by the Supreme Court, and payment of an amount equal to the Schedule 11 assessment, as provided in section 15-55 of the Criminal and Traffic Assessment Act (705 ILCS 135/15-55). If the defendant fails to satisfy the charges and fails to appear at the court appearance, the court shall address the charges in accordance with Rule 556. No other fines, fees, penalties, assessments, or costs shall be assessed in any case that is disposed of on a written plea of guilty without a court appearance under this Rule 530.

(a-1) Multiple Citations Issued. Per the Act, only one scheduled assessment shall be applied regardless of the number of citations issued and prosecuted together. The schedule applicable to the highest classified offense shall be imposed. Where two or more offenses of the same class are prosecuted together, the higher assessment shall be imposed.

(b) The provisions of Supreme Court Rule 402 relating to pleas of guilty do not apply in cases where a defendant enters a guilty plea under this Rule 530. The clerk of the circuit court shall disburse monies collected under this Rule 530 in accordance with the Schedule 11 assessment, as provided in section 15-55 of the Criminal and Traffic Assessment Act (705 ILCS 135/15-55).

Adopted Mar. 8, 2019, eff. July 1, 2019; amended Dec. 9, 2020, eff. Jan. 1, 2021; amended July 20,

2021, eff. immediately.

Rule 531. Written Pleas of Guilty in Overweight and Permit Offenses

(a) Overweight and Permit Offenses. A charge for violating section 3-401(d), 15-111, or offenses punishable by fine pursuant to sections 15-113 .1, 15-113 .2, or 15-113.3 of the Illinois Vehicle Code (truck overweight and permit moves) (625 ILCS 5/3-401(d), 15-111, 15-113.l through 15-113.3), or similar municipal ordinances may be satisfied without a court appearance by a written plea of guilty and payment of the minimum fine fixed by statute, plus an amount equal to the Schedule 10.5 assessment, as provided in section 15-52 of the Criminal and Traffic Assessment Act (705 ILCS 135/15-52). If the defendant fails to satisfy the charges and fails to appear at the court appearance, the court shall address the charges in accordance with Rule 556. No other fines, penalties, assessments, or costs shall be assessed in any case that is disposed of on a written plea of guilty without a court appearance under this Rule 531.

(a-1) Multiple Citations Issued. Per the Act, only one scheduled assessment shall be applied regardless of the number of citations issued and prosecuted together. The schedule applicable to the highest classified offense shall be imposed. Where two or more offenses of the same class are prosecuted together, the higher assessment shall be imposed.

(b) The provisions of Supreme Court Rule 402 relating to pleas of guilty do not apply in cases where a defendant enters a guilty plea under this Rule 531. The clerk of the circuit court shall disburse the fines collected under this Rule 531 in accordance with Sections 15-113 and 16-105 of the Vehicle Code (625 ILCS 5/15-113, 16-105) and shall disburse the assessments collected under this Rule 531 in accordance with the Schedule 10.5 assessment, as provided in section 15-52 of the Criminal and Traffic Assessment Act (705 ILCS 135/15-52).

Adopted Mar. 8, 2019, eff. July 1, 2019; amended Dec. 9, 2020, eff. Jan. 1, 2021; amended July 20, 2021, eff. immediately.

Rule 532. Applicability of 10% Cash Deposit Statute

The 10% cash deposit provision of section 110-7 of the Code of Criminal Procedure of 1963, as amended (725 ILCS 5/110-7), applies in every case in which the amount of bail under these rules is $1,200 or more, except those cases involving truck violations under Rule 526(b)(1) or similar municipal ordinances.

Amended effective October 7, 1970; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended December 22, 1981, effective January 15, 1982; amended April 27, 1984, effective July 1, 1984; amended June 26, 1987, effective August 1, 1987; amended June 19, 1989, effective August 1, 1989; amended June 12, 1992, effective July 1, 1992; amended September 30, 2002, effective immediately; amended June 3, 2010, effective September 15, 2010; amended Mar. 8, 2019, eff. July 1, 2019.

Rules 533-50. Reserved

Part D. Required Court Appearances, Forms and Procedures

Rule 551. Traffic and Conservation Offenses for Which a Court Appearance is Required

A court appearance, either in person or remote, including by telephone or video conference, is required for:

(a) All alleged major traffic offenses of the Illinois Vehicle Code, as amended (625 ILCS 5/1-100 *et seq.*).

(b) All alleged violations of the following specified sections:

ILCS	Description
625 ILCS 5/3-707	Operating Without Insurance
625 ILCS 5/3-708	Operating When Registration Suspended for Noninsurance
625 ILCS 5/6-101	No Valid Driver's License
625 ILCS 5/6-104	Violation of Classification
625 ILCS 5/6-113	Operating in Violation of Restricted License or Permit
625 ILCS 5/11-1414(a)	Passed School Bus—Loading or Unloading
625 ILCS 5/15-112(g)	Refusal to stop and submit vehicle and load to weighing after being directed to do so by an officer, or removal of load prior to weighing
625 ILCS 5/15-301(j)	Violation of Excess Size or Weight Permit

(c) All alleged violations of the Child Passenger Protection Act, as amended (625 ILCS 25/1 *et seq.*).

(d) Any traffic offense which results in an accident causing the death of any person or injury to any person other than the accused.

(e) Conservation offenses identified in subparagraph (b) of Rule 527, or offenses for which civil penalties are required under section 20-35 of the Fish and Aquatic Life Code, as amended (515 ILCS 5/20-35), or section 3.5 of the Wildlife Code, as amended (520 ILCS 5/3.5).

(f) Offenses arising from multiple charges as provided in Rule 503.

(g) Violation of any ordinance of any unit of local government defining offenses comparable to those specified in subparagraphs (a), (b), (c), (d) and (h) of this Rule 551.

(h) Any minor traffic offense where the statutory minimum fine is greater than $95, except those offenses involving truck violations under Rule 526(b)(1) or similar municipal ordinances.

Amended effective October 7, 1970; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended September 20, 1979, effective October 15, 1979; amended December 22, 1981, effective January 15, 1982; amended April 27, 1984, effective July 1, 1984; amended March 27, 1985, effective May 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 19, 1989, effective August 1, 1989; amended December 7, 1990, effective January 1, 1991; amended June 12, 1992, effective July 1, 1992; amended May 24, 1995, effective January 1, 1996; amended March 26, 1996, effective May 1, 1996; amended September 30, 2002, effective immediately; amended August 6, 2010, effective September 15, 2010; amended Dec. 12, 2013, eff. Jan. 1, 2014; amended Mar. 8, 2019, eff. July 1, 2019; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Rule 552. Uniform Tickets—Processing

Uniform Citation and Complaint forms and conservation complaints shall be in forms which may, from time to time, be approved by the Conference of Chief Circuit Judges and filed with this court. The uniform forms shall be adapted for use by municipalities.

The arresting officer shall complete the form or ticket and, within 48 hours after the arrest, shall transmit the portions entitled "Complaint" and, where appropriate, "Disposition Report" and/or "Report of Conviction," either in person, by mail, or electronically where authorized by the Supreme Court, to the clerk of the circuit court of the county in which the violation occurred. Each Uniform Citation and Complaint form and conservation complaint shall upon receipt by the clerk be assigned a separate case number, chronologically, excluding multiple citations issued to the same accused for more than one offense arising out of the same occurrence (see Rule 503(a)). Each accused shall be assigned a single case number containing multiple counts when more than one citation is issued arising out of the same occurrence. A final disposition shall be evidence of the judgment in the case. Upon final disposition of each case, the clerk shall execute a Disposition Report and promptly forward it to the law enforcement agency that issued the ticket. On a plea or finding of guilty in any traffic case, the clerk shall also execute a Report of Conviction, if and as applicable, and such other reports as required by section 6-204 of the Illinois Vehicle Code, as amended (625 ILCS 5/6-204) and promptly forward same to the Secretary of State. This rule does not prohibit the use of electronic or mechanical systems of record keeping, transmitting or reporting.

Amended effective October 7, 1970; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended December 22, 1981, effective January 15, 1982; amended April 27, 1984, effective July 1, 1984; amended March 27, 1985, effective May 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 19, 1989, effective August 1, 1989; amended September 30, 2002, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Sept. 29, 2021, eff. Jan. 1, 2022.

Rule 553. Posting Bail or Bond

(a) By Whom and Where Taken. The several circuit clerks, deputy circuit clerks and law enforcement officers designated by name or office by the chief judge of the circuit are authorized to let to bail any person arrested for or charged with an offense covered by Rules 526, 527 and 528. Upon designation by the chief judge of the circuit, bail may be taken in accordance with this article in any county, municipal or other building housing governmental units, police station, sheriff's office or jail, district headquarters building of the Illinois State Police, weigh station, or portable scale unit established for enforcement of truck violations under Rule 526(b)(1) or similar municipal ordinances. Bail deposits by credit card, debit card or by any other electronic means may only be accepted upon the approval of the chief judge and the circuit clerk's ability to accept such deposits. Individual bonds under paragraph (d) of this rule may additionally be taken as designated by the chief judge of the circuit.

(b) Copy of Bond-Receipt for Cash Bail. A copy of the bond or an official receipt showing the amount of cash bail posted, specifying the time and place of court appearance, shall be furnished to the accused and shall constitute a receipt for bail. The bond or cash bail, or both, shall be delivered to, deposited with, or otherwise transmitted to the office of the circuit clerk of the county in which the violation occurred within 48 hours of receipt or within the time set for the accused's appearance in court, whichever is earlier (see Rule 501(b) for definition of "Cash Bail"). Each delivery, deposit, or transmission shall identify the Complaint(s) associated with the amounts delivered, deposited, or otherwise transmitted.

(c) Driver's License or Bond Certificate. If an accused deposits a driver's license with the arresting officer in lieu of bail or in addition to bail, or deposits a bond certificate, the arresting officer shall note that fact on the accused's copy of the ticket and transmit the driver's license or bond certificate to the clerk within the time provided in paragraph (b) of this rule.

(d) Individual Bond. Persons arrested for or charged with an offense covered by Rules 526, 527 and 528 who are unable to secure release from custody under these rules may be released by giving individual bond (in the amount required by this article) by those law enforcement officers designated by name or office by the chief judge of the circuit, except when the accused is (1) unable or unwilling to establish his or her identity or submit to being fingerprinted as required by law, (2) is charged with an offense punishable by imprisonment and will pose a danger to any person or the community, or (3) elects release on separate bail under Rule 503(a)(3). Persons required to deposit both bail and driver's license under Rule 526(e) may be released on $1,000 individual bond and his or her current Illinois driver's license. If authorized by the chief judge of the circuit, individual bonds under this paragraph (d) may be executed by signing the citation or complaint agreeing to comply with its conditions, except that when the individual bond is for a petty traffic offense, no signature shall be required. Court-approved electronic signatures are allowed.

(e) Alternative Procedure in Minor Cases—Counties Other Than Cook. In any case, excluding citations written by local law enforcement in Cook County, in which the bail or bond specified by Rule 526, 527 or 528 does not exceed $300 in United States currency, an accused not required to be fingerprinted may post bond by giving the United States currency to the sworn law

enforcement officer. The officer shall provide the accused with a copy of the citation duly noted with the amount of the United States currency posted as bond. The accused shall then be released from custody. In such cases, the officer will deliver the appropriate portions(s) of the ticket along with the United States currency as bond(s) to the clerk of the circuit court or a designated building approved by the issuing law enforcement agency and approved by the receiving law enforcement agency before the end of his or her current tour of duty.

Amended effective October 7, 1970; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended October 17, 1979, effective November 15, 1979; amended December 22, 1981, effective January 15, 1982; amended June 26, 1987, effective August 1, 1987; amended December 7, 1990, effective January 1, 1991; amended June 12, 1992, effective July 1, 1992; amended May 24, 1995, effective January 1, 1996; amended June 11, 2009, effective immediately; amended August 6, 2010, effective September 15, 2010; amended December 7, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Dec. 10, 2018, eff. Jan. 1, 2019; amended Mar. 8, 2019, eff. July 1, 2019; amended July 20, 2021, eff. immediately.

Rule 554. Substitution of Cash Bail

(a) Not sooner than 10 court days after arrest and not later than 3 court days before the date set for appearance in court, an accused who deposited his or her driver's license or a bond certificate in lieu of cash bail, or who was released on Notice to Appear, promise to comply, or individual bond under Rule 553(d), may recover either his or her license or bond certificate or further secure his or her release by substituting cash bail in the amount required by this article with the clerk of the circuit court of the county in which the violation occurred; provided, however, that no driver's license required to be deposited under subparagraph (e) of Rule 526 may be recovered under this rule. The clerk may waive the time limits specified by this rule.

(b) In all cases in which a court appearance is not required under Rule 551, an accused who desires to satisfy the charge(s) but is unwilling to plead guilty may substitute cash bail for each offense under paragraph (a) of this rule; in such event, if the accused does not appear on the date set for appearance, or any date to which the case may be continued, it shall be presumed he has consented to the entry of an *ex parte* judgment on each offense (see Rule 556).

Amended effective October 7, 1970; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended December 22, 1981, effective January 15, 1982; amended April 27, 1984, effective July 1, 1984; amended June 26, 1987, effective August 1, 1987; amended August 21, 1996, effective immediately; amended Mar. 8, 2019, eff. July 1, 2019.

Rule 555. Returning Bail or Documents

(a) Court Appearance. A defendant who personally appears in court on the date on which his or her case is finally disposed of shall, upon payment of any fines, penalties, assessments, and costs which may be assessed against him or her upon a plea or finding of guilty, or as a condition

of an order of supervision under section 5-6-3.1 of the Unified Code of Corrections, as amended (730 ILCS 5/5-6-3.1), recover unless otherwise provided by law his or her driver's license (unless revoked or suspended) or the bond certificate deposited by him or her. Cash bail, or any balance due the defendant, shall be refunded to the defendant by the clerk as soon as practicable after the disposition of the charges.

(b) Written Plea of Guilty. In any case that can be disposed of on a written plea of guilty without a court appearance under Rules 529, 530, or 531 including multiple citations issued in the same occurrence, the defendant may submit his or her written plea of guilty and pay the prescribed fines, penalties, assessments, and costs to the clerk of the circuit court of the county in which the violation occurred not earlier than 10 court days after arrest, and not later than 3 court days before the date set for appearance, unless the clerk waives these time limits. If cash bail was posted, the clerk shall apply the amount necessary to pay prescribed fines, penalties, assessments, and costs. If a driver's license or bond certificate was deposited or if a promise to comply or notice to appear was issued, the full amount of the prescribed fines, penalties, assessments, and costs must be paid to the clerk and accompanied by the written plea of guilty. Upon receiving a written plea of guilty and payment in full, the clerk shall, unless otherwise provided by law, return the driver's license or bond certificate to the defendant. A written plea of guilty may be mailed to the clerk of the circuit court of the county in which the violation occurred. A plea of guilty may be transmitted electronically, if authorized by the Supreme Court. If the plea is accompanied by the full amount of the prescribed fines, penalties, assessments, and costs, the clerk shall mail to the defendant any driver's license or bond certificate deposited in lieu of bail.

Amended effective October 7, 1970; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended December 22, 1981, effective January 15, 1982; amended April 27, 1984, effective July 1, 1984; amended June 26, 1987, effective August 1, 1987; amended June 19, 1989, effective August 1, 1989; amended September 30, 2002, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended June 8, 2018, eff. July 1, 2018; amended Mar. 8, 2019, eff. July 1, 2019.

Rule 556. Procedure if Defendant Fails to Appear or Satisfy Charge

(a) Court Appearance Not Required.

(1) If a person accused of an offense that does not require a court appearance under Rule 551 does not satisfy the charge pursuant to Rules 529, 530, or 531 or does not appear on the date set for appearance, or any date to which the case may be continued, the court may enter an *ex parte* judgment of conviction imposing a single assessment, specified in the applicable assessment Schedule 10, 10.5, or 11 for the charged offense, as provided in the Criminal and Traffic Assessment Act (705 ILCS 135/1 *et seq.*), plus the minimum fine allowed by statute. If the defendant submits payment for an offense under Rule 529 but fails to execute the required plea of guilty, the court may enter an *ex parte* judgment against the defendant but may elect to impose only the assessment applicable under Rule 529 (*i.e.*, Schedule 12). Payment received for fines, penalties, assessments, and costs assessed following the entry of an *ex parte* judgment

shall be disbursed by the clerk pursuant to the schedule assessed under the Criminal and Traffic Assessment Act (705 ILCS 135/1 *et seq.*) and any other applicable statute. The clerk of the court shall notify the Secretary of State of the conviction pursuant to Rule 552.

(2) In lieu of the foregoing procedure, if a person accused of an offense that does not require a court appearance under Rule 551 does not satisfy the charge pursuant to Rules 529, 530, or 531 or does not appear on the date set for appearance, or any date to which the case may be continued, the court may enter an order declaring bail, if any, to be forfeited, and the court shall continue the case for a minimum of 30 days. The clerk shall send notice of the court's order to the defendant at his or her last known address. If the defendant does not appear on the continued court date or, within that period, satisfy the court that his or her appearance is impossible and without any fault on his or her part, the court shall enter an order for failure to appear to answer the charge. In addition to forfeiture, a verified charge may be filed (if none has previously been filed), and a summons or warrant of arrest for the defendant may be issued. Within 21 days after the date to which the case has been continued for a traffic offense, the clerk shall notify the Secretary of State of the court's order of failure to appear. The Secretary of State shall, in the case of an Illinois licensed driver who has deposited his or her driver's license, immediately suspend the defendant's driving privileges in accordance with section 6-308 of the Illinois Vehicle Code, as amended (625 ILCS 5/6-308); if the defendant is not an Illinois licensed driver or resident, the Secretary of State shall notify the appropriate driver's licensing authority. The clerk of the circuit court shall notify the Secretary of State of the final disposition of the case as provided in Rule 552 when the defendant has appeared and otherwise satisfied his or her obligations following an order for failure to appear.

(3) In all cases in which a court appearance is not required under Rule 551, the defendant shall be provided with a statement, in substantially the following form, on the "Complaint" or on the bond form:

"If you do not satisfy the charge against you prior to the date set for appearance or if you fail to appear in court when required, you consent to the entry of a judgment against you in the amount of all applicable fines, penalties, assessments, and costs; cash bail or other security you have deposited will be applied toward payment."

(b) Court Appearance Required.

(1) If a person accused of an offense punishable by fine only that requires a court appearance under Rule 551 does not appear on the date set for appearance or any date to which the case may be continued, the court may, with concurrence of the prosecuting agency, enter an *ex parte* judgment of conviction imposing a single assessment, specified in the applicable assessment Schedule 9, 10, 10.5, 11, or 13 for the charged offense as provided in the Criminal and Traffic Assessment Act (705 ILCS 135/ 1 *et seq.*), plus the minimum fine allowed by statute. Payment received for fines, penalties, assessments, and costs assessed following the entry of an *ex parte* judgment shall be disbursed by the clerk pursuant to the disbursement of the schedule assessed under the Criminal and Traffic Assessment Act (705 ILCS 13 5-1 et seq.) and any other applicable statute. The clerk of the court shall notify the Secretary of State of the conviction pursuant to Rule 552.

(2) For offenses punishable by a term of imprisonment of less than one year, and in lieu of the foregoing procedure for offenses punishable by fine only that require a court appearance under Rule 551, if a defendant fails to appear on the date set for appearance, or any date to which the case may be continued, and a court appearance is required, the court may enter an order declaring the bail to be forfeited and shall continue the case for a minimum of 30 days. The clerk shall send notice of the court's order to the defendant at his or her last known address. If the accused does not appear on the continued court date or, within that period, satisfy the court that his or her appearance is impossible and without any fault on his or her part, the court shall

(i) enter judgment in accordance with sections 110-7 or 110-8 of the Code of Criminal Procedure of 1963, as amended (725 ILCS 5/110-7, 110-8). In addition to forfeiture, a verified charge may be filed and a summons or warrant of arrest may issue or

(ii) enter an order for failure to appear to answer the charge. Upon an entry of an Order for Failure to Appear for a traffic offense, within 21 days after the date to which the case had been continued, the clerk shall notify the Secretary of State of the court's order. The Secretary of State shall, in the case of an Illinois licensed driver who has deposited his or her driver's license, immediately suspend the defendant's driving privileges in accordance with section 6-308 of the Illinois Vehicle Code, as amended (625 ILCS 5/6-308); if the defendant is not an Illinois licensed driver or resident, the Secretary of State shall notify the appropriate driver's licensing authority. The clerk of court shall notify the Secretary of State of the final disposition as provided in Rule 552 when the defendant has appeared and otherwise satisfied his or her obligation following an order for failure to appear.

Amended effective October 7, 1970; amended February 17, 1977, effective April 1, 1977, in counties other than Cook, effective July 1, 1977, in Cook County; amended December 22, 1981, effective January 15, 1982; amended April 27, 1984, effective July 1, 1984; amended June 26, 1987, effective August 1, 1987; amended June 19, 1989, effective August 1, 1989; amended December 7, 1990, effective January 1, 1991; amended May 24, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended December 5, 2003, effective January 1, 2004; amended December 30, 2014, eff. Jan. 1, 2015; amended June 8, 2018, eff. July 1, 2018; amended Dec. 10, 2018, eff. Jan. 1, 2019; amended Mar. 8, 2019, eff. July 1, 2019; amended June 9, 2020, eff. July 1, 2020; amended July 20, 2021, eff. July 1, 2021, *nunc pro tunc*.

Committee Comments
(December 10, 2018)

Effective January 1, 2019, Rule 501(g) no longer requires that a promise to comply be written.

(June 8, 2018)

"For a fine only offense where the minimum statutory fine is greater than the cash bail amount, the fines, penalties, and costs assessed shall be equal to the minimum statutory fine in whole dollars" language was added to eliminate conflicts between bail amounts that are not equal to

minimum statutory fines; if a prosecuting agency agrees to an *ex parte* judgment, defendants are being assessed widely differing fine amounts. For example, violations of operating without insurance (625 ILCS 5/3-707) require bail of $2000 under Rule 526(d). However, the statute states "a person shall be required to pay a fine in excess of $500, but not more than $1,000." Defendants were being assessed fines in various amounts, and in some cases, defendants that did not appear in court and the court entered an *ex parte* judgment paid a lower fine than a defendant that appeared in court as required by the Rule. A variety of fine amounts were being assessed, such as: a fine of $200 (10% of the bail amount), a fine of $500.01 or $501 under statute, a fine of $1000 under statute, or a fine of $2,000—the full bail amount under Rule 526(d). These amendments are meant to eliminate varying fine amounts being assessed to defendants. When the minimum statutory fine is "in excess of" or "more than" a specified amount, the court should assess the fine to the next whole dollar amount.

(December 5, 2003)

Supreme Court Rule 556 ("Procedure if Defendant Fails to Appear") delineates several procedures if the defendant fails to appear after depositing a driver's license in lieu of bond, executes a written promise to comply, posts bond or issued a notice to appear.

The rule provided that the court may "enter an *ex parte* judgment of conviction against any accused charged with an offense punishable by a fine only and in so doing shall assess fines, penalties and costs in an amount not to exceed the cash bail required by this article." Rule 556 does not detail the specific costs and penalties, or their amounts, in the entry of *ex parte* judgments. The clerk is then left with deciding which costs, fees and additional penalties (and their amounts) should be applied. This is currently being determined on a county by county basis.

The committee concluded that distribution under Rule 556 was not a "levy of a gross amount." See Rule 529, Committee Comments.

The committee believes that consistency and uniformity in disbursing funds from *ex parte* judgments was of the utmost importance in the efficient administration of justice and recommends that the fines, penalties, and costs assessed be equal to bail, and the distribution of those amounts should be pursuant to Supreme Court Rule 529(a). The State's Attorney fee, if any, would be included within the county's 38.675% distribution.

Rule 557. Preparation of Sentencing Orders.

At the time of sentencing in a traffic case, conservation case, or ordinance violation cases, the court shall enter a written order imposing the sentence and all applicable fines, fees, assessments, and costs against the defendant and specifying applicable credits. The prosecuting entity shall draft such order and present the order for review by defendant or, if defendant is represented, by defense counsel, before submitting it to the court.

Adopted Feb. 26, 2019, eff. March 1, 2019.

Rule 558. Correction of Certain Errors in Sentencing.

(a) In traffic cases, conservation cases, or ordinance violation cases, the circuit court retains jurisdiction to correct the following sentencing errors at any time following judgment after notice to the parties, including during the pendency of an appeal, on the court's own motion, or on motion of any party:

(1) Errors in the imposition or calculation of fines, fees, assessments, or costs;

(2) Errors in the application of *per diem* credit against fines;

(3) Errors in the calculation of presentence custody credit; and

(4) Clerical errors in the written sentencing order or other part of the record resulting in a discrepancy between the record and the actual judgment of the court.

(b) Where a circuit court's judgment pursuant to this rule is entered more than 30 days after the final judgment, the judgment constitutes a final judgment on a justiciable matter and is subject to appeal in accordance with Supreme Court Rule 303.

(c) No appeal may be taken by a party from a judgment of conviction on the ground of any sentencing error specified above unless such alleged error has first been raised in the circuit court. When a post-judgment motion has been filed by a party pursuant to this rule, any claim of error not raised in that motion shall be deemed forfeited.

(d) If a motion is filed or judgment pursuant to this Rule is entered after a prior notice of appeal has been filed, and said appeal remains pending, the pending appeal shall not be stayed. Any appeal from a judgment entered pursuant to this rule shall be consolidated with the pending appeal.

(e) In all traffic, conservation, or ordinance violation cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule.

Adopted Feb. 26, 2019, eff. March 1, 2019; amended May 17, 2019, eff. immediately.

Rules 559-69. Reserved

Part E. Rules and Procedures for Non-Traffic/Non-Conservation Ordinance Violations

Rule 570. Applicability

Rules 570 through 579 are applicable to the prosecution, through the judicial system, of violations of ordinances passed pursuant to section 5-1113 of the Counties Code (55 ILCS 5/5-1113), section 1-2-1 of the Illinois Municipal Code (65 ILCS 5/1-2-1), and section 11-1301 of the Illinois Vehicle Code (625 ILCS 5/11-1301) or home rule authority for which the penalty does not

include the possibility of a jail term. These rules shall not apply to administrative adjudications.

Adopted December 7, 2011, effective immediately.

Committee Comment

(December 7, 2011)

Rules 570 through 579 apply to the prosecution of ordinance violations not punishable by a jail term and other than traffic and conservation offenses. These rules also apply to parking offenses. Violations of ordinances punishable by a jail term are to be prosecuted in accordance with the rules of criminal procedure. 65 ILCS 5/1-2-1.1. Nothing in these rules is intended to limit the ability to proceed through an administrative process or other alternative methods of resolving ordinance violations.

Rule 570 establishes the applicability of the ordinance violation prosecutions which are prosecuted through the judicial system to ordinances passed pursuant to the Counties Code (55 ILCS 5/5-1113 (ordinance and rules to execute powers; limitations on punishments)), the Illinois Municipal Code (65 ILCS 5/1-3-1 (ordinances and rules; fines or penalties; limitations on punishment)), and home rule authority where the penalty does not include jail time.

Rule 570 would exclude from these rules ordinance violations heard by the administrative adjudication process.

Rule 571. Code of Civil Procedure to Apply

Except as specifically stated herein or in existing statutes, the Code of Civil Procedure shall apply in all ordinance prosecutions to which these rules apply.

Adopted December 7, 2011, effective immediately.

Committee Comment

(December 7, 2011)

This rule builds on the holdings of both *City of Danville vs. Hartshorn*, 53 Ill. 2d 399 (1973) and *Village of Park Forest v. Walker*, 64 Ill. 2d 286 (1976), in which the Supreme Court held that the Civil Practice Act applied to ordinance violations where the penalty is a fine only. Persons charged with violating municipal ordinances have a right to trial by jury if a written jury demand along with the jury fee is filed and paid at the time of first appearance under provisions of section 2-1105 of the Code of Civil Procedure. But under Supreme Court Rule 201(h), discovery in ordinance prosecution cases where the penalty is a fine only, is allowed only by leave of court. Before and after the *Hartshorn* decision, courts have struggled to decide what portions of the Code of Civil Procedure apply to ordinance violation prosecutions. It is the intent of Rule 571 to clarify that the Code of Civil Procedure applies to all ordinance violation proceedings under Rules 570 through 579, except as otherwise provided by Supreme Court Rules such as Rule 201(h).

Rule 572. Form of Charging Document.

(a) A prosecution for an ordinance violation for which the penalty does not include the possibility of a jail term may be initiated by a charging document such as a Notice to Appear, Citation, Ticket, or Complaint or combination of the same. The charging document shall be signed by an attorney representing the plaintiff, or by a peace officer or a code enforcement officer authorized by the plaintiff to sign the charging document. The charging document shall be verified as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109). Such charging document or combination of documents shall contain at least the following:

1. The name of the prosecuting entity;

2. The name of the defendant and his or her address, if known;

3. The nature of the offense and a reference to the relevant ordinance;

4. A statement whether the defendant is required to appear in court and, if so, the date, time and place of appearance;

5. If applicable, the steps the defendant can take to avoid an otherwise required appearance; and

6. A statement that the defendant may demand a jury trial by filing a jury demand and paying a jury demand fee when entering his or her appearance, plea, answer to the charge, or other responsive pleading.

(b) The following statement(s) shall also appear on the charging document or combination of documents listed in (a) above in the event a warrant or default judgment will be sought by the prosecuting entity:

1. A statement that a default judgment may be entered in the event the person fails to appear in court or answer the charge made on the date set for the defendant's court appearance or any date to which the case is continued. The statement must also contain the specific amount of any default judgment.

2. A statement that an arrest warrant may issue if the defendant fails to appear at any hearing.

(c) Multiple Violations. Multiple violations of automobile parking offenses may be contained in a single count. Violations of the same offense occurring on different days, or violations of ordinances which carry a per day fine, may be stated in one count even though each violation or day upon which a violation occurs carries a separate fine. Such separate violations and fines must be clearly stated.

(d) Prayer for Relief. It shall be sufficient for the prosecuting entity to generally pray for a penalty range between the minimum and maximum penalties authorized by the corporate authorities of the prosecuting entity.

(e) Amendments. The charging document may be amended at any time, before or after judgment, to conform the pleadings to the proofs on just and reasonable terms. However, the amount of any default judgment appearing on the charging document under Rule 572(b) may not

be amended after the entry of such judgment, without notice to defendant.

Adopted December 7, 2011, effective immediately.

Committee Comment

(December 7, 2011)

Many prosecuting entities have created hybrid complaints that serve both as notice to appear and the charging document itself, similar to a traffic citation. Since an ordinance violation prosecution incorporates aspects of both criminal and civil procedures, the more general term "charging document" phrase is used.

(a) Rule 572 is intended to provide flexibility in the initiation of an ordinance violation prosecution.

The Municipal Code states that "the first process shall be a summons or a warrant." 65 ILCS 5/1-2-9.

Many prosecuting entities, however, begin with a "Notice to Appear" which is provided for in the Code of Criminal Procedure, 725 ILCS 5/1 07-12: (a) Whenever a peace officer is authorized to arrest a person without a warrant he may instead issue to such a person a notice to appear *** (c) Upon failure of the person to appear a summons or warrant of arrest may issue." A notice to appear "is a means by which a person may be brought before the court without the inconvenience of immediate arrest ***. Such a notice may be issued whenever a peace officer has probable cause to make a warrantless arrest." *People v. Warren*, 173 Ill. 2d 348, 357 (1996).

The purpose of this rule is to continue to allow prosecuting entities to utilize the most efficient means of initiating ordinance violation proceedings. "Notices to Appear" are an appropriate and reasonable means of informing defendants of charges against them and are similar to citations issued in traffic cases.

This does not prohibit a prosecuting entity from obtaining an arrest warrant based upon probable cause, as authorized in section 1-2-9 of the Municipal Code (65 ILCS 5/1-2-9).

This rule also makes it clear that an attorney need not sign the charging document in every case. This is especially important where the process is initiated by a nonattorney such as a police officer or code enforcement officer.

(b) This section provides for issuance of default judgments or warrants upon a failure to appear.

(c) This is intended to minimize paperwork and codify the decision in *Village of Oak Park v. Flanagan*, 35 Ill. App. 3d 6 (1st Dist. 1975). The Village of Oak Park case involved prosecution for multiple parking tickets in which the court held that a computer printout was sufficient to comply with the requirements of pleading for ordinance violations. Note, however, this rule is not meant to contravene the one act, one crime rule identified in *Village of Sugar Grove v. James Rich*, 347 Ill. App. 3d 689 (1st Dist. 2004).

(d) Section 2-604 of the Code of Civil Procedure requires a "specific" prayer for relief. 735

ILCS 5/2-604. This paragraph is intended to make it clear that a prayer for a penalty within the penalty range authorized by the ordinance is sufficiently specific to advise the defendant of the maximum penalty to which they are exposed.

(e) Section 2-616(a) of the Code of Civil Procedure specifically permits amendments to civil pleadings at various times. 735 ILCS 5/2-616(a). The purpose is to avoid minor errors in the charging document being a cause of a finding of not guilty when a violation has been proved by the requisite proof. The last sentence enforces the requirement of Rule 572(b) that if the prosecuting entity will seek a default judgment, it must state the specific amount in the charging document or combination of documents served upon the defendant.

Rule 573. Service of the Charging Document

The charging document, including a notice to appear, may be served by hand delivery by a peace officer, code enforcement officer, or as otherwise authorized by law. Where the fine would not be in excess of $750 for a municipal ordinance offense, service of summons may be made by certified mail, return receipt requested, as authorized in section 1-2-9.1 of the Municipal Code (65 ILCS 5/1-2-9.1) whether service is to be within or without the state. Parking tickets should include a certification that the ticket was either placed on the vehicle or hand delivered to the driver. This rule does not prohibit initiating prosecution by any other means authorized by statute.

Adopted December 7, 2011, effective immediately; Adopted Rule 573 corrected December 9, 2011, nunc pro tunc December 7, 2011.

Committee Comments

(December 7, 2011)

Service of process in civil actions generally is covered in Supreme Court Rules 101 through 110. Many ordinance prosecutions are initiated by code enforcement officers, *e.g.*, building safety inspectors for property maintenance violations or animal control officers for animal ordinance violations.

The final sentence makes it clear that this rule allowing for the initiation of prosecution by a Notice to Appear does not abrogate the opportunity to initiate a prosecution as provided in section 1-2-9 of the Municipal Code (65 ILCS 5/1-2-9), namely, by summons or warrant.

Rule 574. Opportunity to Settle

An opportunity to avoid a court appearance through settlement of the dispute may be provided for by ordinance. The manner and time limit for settlement before which a court appearance will be required may be set forth in the charging document.

Adopted December 7, 2011, effective immediately.

Committee Comment

(December 7, 2011)

This rule permits settlement of a violation. This allows for more efficient processing and court time management.

Rule 575. Appearance of Defendant, Answer; Failure to Appear; Discovery and Pretrial Procedures

(a) A defendant responding to a charging document for an ordinance violation may appear and enter a plea, file an answer to the charge, or file other responsive pleadings. A Not Guilty plea will be construed as a general denial. The defendant need not file a written answer unless ordered to do so by the Court.

(b) In the event the defendant fails to appear at any proceeding for which the Court has not excused the defendant's appearance, an arrest warrant may issue, or default judgment may be entered. If such judgment is entered, the defendant shall be mailed written notice to the defendant's last known address of: (1) the amount of the judgment, (2) if applicable, the date by which such judgment must be paid, and (3) that a motion to vacate judgment must be filed within 30 days of the date of the mailing of the written notice. "Defendant's last known address" shall be presumed to be the address provided by the defendant himself or herself upon actual delivery of the charging document.

(c) A party may make a motion for summary judgment prior to any trial· on the merits.

(d) In prosecutions for violations of ordinances, no discovery procedures shall be allowed prior to trial except by leave of court.

Adopted December 7, 2011, effective immediately.

Committee Comment

(December 7, 2011)

(a) The purpose of this section is to provide for a simple process for those who appear to answer a charge and also in determining the effect of a failure to appear for an ordinance violation charge. Supreme Court Rule 286(a) provides for a general denial in small claims cases and this rule provides a similar procedure for ordinance violations. Supreme Court Rule 556(a) permits the entry of default judgment in traffic cases. This rule provides a similar procedure for ordinance violations.

(b) This section provides for procedures to follow in the event of a Defendant's failure to appear at any proceeding for which the Court has not previously excused the appearance.

(c) *Village of Beckmeyer v. Wheelan,* 212 Ill. App. 3d 287 (5th Dist. 1991), provides for summary judgment motions in ordinance violation cases.

(d) Supreme Court Rule 20l(h) provides: "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. This rule extends the application of the rule to cases in which penalties may include public service work and restitution in addition to fines."

Rule 576. Right to Counsel

A defendant has a right to be represented by an attorney; however, there shall be no right to appointment of counsel in suits for violation of ordinances for which the penalty does not include the possibility of a jail term.

Adopted December 7, 2011, effective immediately.

Committee Comment

(December 7, 2011)

This rule reiterates the long held principle that the right to a court appointed counsel does not attach where there is no possibility of being sentenced to a jail term as a penalty for the underlying offense. See *City of Urbana v. Andre N.B.*, 211 Ill. 2d 456 (2004); *City of Danville v. Clark*, 63 Ill. 2d 408 (1976).

Rule 577. Jury Trial

Either party shall have the right to trial by a jury. The prosecuting entity shall make its jury demand at the time the action is commenced. The defendant shall make his or her jury demand and pay the jury demand fee at the time of entering his or her appearance, plea, answer to the charge, or other responsive pleading. Failure to pay the required jury fee to the clerk of the circuit court at the time of entering his or her initial appearance, or by a date ordered by the court, shall constitute a forfeiture of the right to a jury trial.

Because ordinance offenses do not provide for penalties in excess of $50,000, any jury request shall result in the matter being tried by a jury of six members.

Adopted December 7, 2011, effective immediately.

Committee Comment

(December 7, 2011)

Section 2-1105 of the Code of Civil Procedure is applicable to jury demands in ordinance violation cases. *City of Danville v. Hartshorn*, 53 Ill. 2d 399, 403 (1973). Section 103-6 of the Code of Criminal Procedure also applies to jury demands in ordinance violation cases. It provides: "every person accused of an offense shall have the right to a trial by jury unless *** (ii) the offense is an ordinance violation punishable by fine only and the defendant either fails to file a demand for a trial by jury at the time of entering his or her plea of not guilty or fails to pay to the clerk of the circuit court at the time of entering his or her plea of not guilty any jury fee required to be paid to the clerk." 725 ILCS 5/103-6; 705 ILCS 105.27.1a(w)(3).

Rule 578. Burden of Proof

The prosecuting entity must prove the ordinance violation by a preponderance of the evidence; meaning it is more likely true than not that the violation occurred.

Adopted December 7, 2011, effective immediately.

Committee Comment

(December 7, 2011)

This rule restates case law which holds that the burden of proof in ordinance violation cases is the civil law standard of preponderance of the evidence rather than the criminal standard of beyond a reasonable doubt. *City of Mattoon v. Mentzer*, 282 Ill. App. 3d 628, 634 (4th Dist. 1996) (citing *Chicago v. Joyce*, 38 Ill. 2d 368, 373 (1967)).

Rule 579. Disposition and Appeal

(a) Sentence. The court shall determine the amount of any fine for an ordinance violation to which these rules apply, except that any fine imposed shall not be less than the "minimum fine" authorized by ordinance. Court costs shall be imposed.

(b) Additional Conditions. In addition to any fine imposed, the court may impose a sentence including restitution, or other appropriate penalties or conditions authorized by ordinance. A sentence of conditional discharge or court supervision disposition shall be permitted by ordinance.

(c) Dispositional Considerations. The court may consider evidence and information may be offered by the parties in consideration for the penalties and/or conditions sought.

(d) Appealability. Either party shall have the right to appeal any final judgment entered in an ordinance violation case pursuant to Rule 303, "Appeals from Final Judgments of the Circuit Court in Civil Cases."

Adopted December 7, 2011, effective immediately.

Committee Comment

(December 7, 2011)

(a) In accordance with typical situations in which a range of penalties is authorized by statute, the court in *City of Chicago v. Roman*, 184 Ill. 2d 504, 511 (1998), held that the fine may not be less than the statutory minimum.

(b) Under the holding in *City of Highland Park v. Curtis*, 83 Ill. App. 2d 218, 229 (2d Dist. 1967), the court should be permitted to impose restitution. Other dispositions must be provided for by ordinance. *Village of Wheeling v. Evanger's Dog and Cat Food Co., Inc.*, 399 Ill. App. 3d 304 (1st Dist. 2010).

(c) Statutory authorization for imposition of court supervision is found in the Illinois Municipal

Code (65 ILCS 5/1-1-1 *et seq.*). *Village of Wheeling v. Evanger's Dog and Cat Food Co., Inc.*, 399 Ill. App. 3d 304, 307 (1st Dist. 2010).

(d) Because ordinance violation prosecutions are "quasi-criminal in character, but civil in form," municipalities may properly appeal from a judgment in favor of a defendant. Neither double jeopardy nor Supreme Court Rule 604 bars such an appeal. *Village of Riverdale v. Irwin*, 259 Ill. App. 3d 1008, 1009 (1st Dist. 1994); *Village of Park Forest v. Bragg*, 38 Ill. 2d 225, 227 (1967).

Rules 580-84. Reserved

Part F. Rules and Procedures for Civil Law Violations

Rule 585. Applicability

Rules 585 through 590 are applicable to civil law violations, pursuant to section 4(a) of the Cannabis Control Act (720 ILCS 550/4 (a)).

Adopted Sept. 1, 2016, eff. immediately; amended June 9, 2020, eff. July 1, 2020.

Committee Comments
(Revised June 9, 2020)

Rules 585 through 590 apply to civil law violations pursuant to section 4(a) of the Cannabis Control Act (720 ILCS 550/4 (a)), which are punishable by a fine only. Nothing in these rules is intended to limit the ability to proceed through an administrative process or other alternative methods of resolving ordinance violations for similar offenses.

Rules 503 and 551, regarding multiple charges under these rules, do not apply to Civil Law Violations or if a citation is written in conjunction with another violation.

Rule 585 excludes from these rules ordinance violations heard by the administrative adjudication process.

Rule 586. Appearance Date

The officer or clerk of the circuit court shall give the accused a first appearance date 30 to 45 days from the date of the violation whenever practicable. The accused is to pay $120 per violation pursuant to this Article on or before the appearance date set by the officer or clerk of the circuit court or to appear in court. It is the policy of this court that the issuing officer is not required to appear on this day.

Adopted Sept. 1, 2016, eff. immediately.

Rule 587. Notice to Accused

When issuing a Uniform Civil Law Citation, the officer shall also issue a written notice to the accused in substantially the following form:

CONTEST THIS VIOLATION

If you intend to contest this violation or if you intend to demand a trial, so notify the clerk of the circuit court at least 10 work days before the date set for your appearance. Note that appearing in court may result in additional fines and fees. A new appearance date will be set, and you will be notified of the time and place of your appearance. When you are notified of your new appearance date, you should come to court prepared for trial and bring any witnesses you may have. You will also have the opportunity to demand a trial by jury, which would occur at a later date. If you demand a trial by jury, additional fees may apply.

Upon timely receipt of notice that the accused intends to contest the violation, the clerk shall set a new appearance date not less than 7 days nor more than 60 days after the original appearance date set by the law enforcement officer or the clerk of the circuit court and shall notify all parties of the new date and the time for appearance. If the accused demands a trial by jury, the trial shall be scheduled within a reasonable period. A jury fee may be applicable, as directed by the court.

Adopted Sept. 1, 2016, eff. immediately.

Rule 588. Fines, Penalties, and Costs on Written Consents to Judgments in Civil Law Violations

(a) All civil law violations may be satisfied without a court appearance by admitting to the violation, with the exception of electronic admissions unless authorized by the Supreme Court, and payment of $120, inclusive of all penalties, fees, and costs.

(b) No other fines, fees, penalties, or costs shall be assessed in any case that is disposed of on an admission to the violation without a court appearance. The fine shall be disbursed by the clerk pursuant to statute.

Adopted Sept. 1, 2016, eff. immediately.

Rule 589. Uniform Civil Law Citations—Processing

Uniform Civil Law Citation forms shall be in a form, which may from time to time be approved by the Conference of Chief Circuit Judges and filed with this court. The uniform form shall be adapted for use by municipalities. The law enforcement officer shall complete the form or citation and, within 48 hours after the issuance, shall transmit the portions entitled “Complaint” and “Disposition Report,” either in person or by mail, to the clerk of the circuit court of the county in which the violation occurred. Each Uniform Civil Law Citation form shall, upon receipt by the clerk, be assigned a separate case number, numbered chronologically, excluding multiple citations issued to the same accused for more than one violation arising out of the same occurrence. Each

accused shall be assigned a single case number containing multiple counts when more than one citation is issued arising out of the same occurrence. A final disposition noted on the reverse side of the "Complaint" shall be evidence of the judgment in the case. Upon final disposition of each case, the clerk shall execute the "Disposition Report" and promptly forward it to the law enforcement agency that issued the citation. This rule does not prohibit the use of electronic or mechanical systems of record keeping, transmitting, or reporting.

Adopted Sept. 1, 2016, eff. immediately; amended Sept. 29, 2021, eff. Jan. 1, 2022.

Rule 590. Procedure if Defendant Fails to Appear

In all civil law violation cases in which a defendant is issued a Uniform Civil Law Citation as provided under this Article and fails to appear on the date set for appearance, or on any date to which the case may be continued, the court may enter a default judgment and in so doing shall assess a fine, inclusive of costs, as prescribed in Rule 588. Payment received for the fine assessed following the entry of a default judgment shall be disbursed by the clerk pursuant to Rule 588.

Adopted Sept. 1, 2016, eff. immediately.

Rules 591-600. Reserved

Article VI. Appeals in Criminal Cases, Post-Conviction Cases, and Juvenile Court Proceedings

Rule 601. Supersedure of Code of Criminal Procedure of 1963

These rules supersede and replace articles 120 and 121, except sections 121-1 and 121-13 of the Code of Criminal Procedure of 1963.

Amended October 21, 1969, effective January 1, 1970.

Committee Comments

This rule is essentially former Rule 27(1). It contains some changes in language necessitated by the fact that the new criminal appeals rules are intended to supersede and replace almost all of the criminal appeals procedures contained in the Code of Criminal Procedure of 1963.

Rule 602. Method of Review

The only method of review in a criminal case in which judgment was entered on or after January 1, 1964, shall be by appeal. The party appealing shall be known as the appellant and the adverse party as the appellee, but the title of the case shall not be changed. Review of cases in which judgments were entered before January 1, 1964, shall be governed by the time limitations in effect on December 31, 1963, and the procedure shall be as provided by the rules then in effect,

or as provided by these rules, at the option of the appellant.

Amended May 30, 2008, effective immediately.

Rule 603. Court To Which Appeal is Taken

Appeals in criminal cases in which a statute of the United States or of this State has been held invalid shall lie directly to the Supreme Court as a matter of right. All other appeals in criminal cases shall be taken to the Appellate Court.

Amended effective July 1, 1971; amended October 1, 2010, effective immediately; amended Feb. 6, 2013, eff. immediately.

Committee Comments

(Revised July 1, 1971)

The rule, new in 1967, was revised in 1971, in light of the new constitution, which limited the Supreme Court's mandatory direct appellate jurisdiction to death cases. The constitutional question basis for direct appeal was revised to limit direct appeal to cases in which a statute is held invalid. The same provision appears in Rule 302, governing civil appeals.

Rule 604. Appeals from Certain Judgments and Orders

(a) Appeals by the State.

(1) *When State May Appeal.* In criminal cases the State may appeal only from an order or judgment the substantive effect of which results in dismissing a charge for any of the grounds enumerated in section 114-1 of the Code of Criminal Procedure of 1963; arresting judgment because of a defective indictment, information or complaint; quashing an arrest or search warrant; or suppressing evidence.

(2) *Leave to Appeal by State.* The State may petition for leave to appeal under Rule 315(a).

(3) *Release of Defendant Pending Appeal.* A defendant shall not be held in jail or to bail during the pendency of an appeal by the State, or of a petition or appeal by the State under Rule 315(a), unless there are compelling reasons for his or her continued detention or being held to bail.

(4) *Time Appeal Pending Not Counted.* The time during which an appeal by the State is pending is not counted for the purpose of determining whether an accused is entitled to discharge under section 103-5 of the Code of Criminal Procedure of 1963.

(b) Appeals When Defendant Placed Under Supervision or Sentenced to Probation, Conditional Discharge or Periodic Imprisonment. A defendant who has been placed under supervision or found guilty and sentenced to probation or conditional discharge (see 730 ILCS 5/5-6-1 through 5-6-4), or to periodic imprisonment (see 730 ILCS 5/5-7-1 through 5-7-8), may appeal from the judgment and may seek review of the conditions of supervision, or of the finding

of guilt or the conditions of the sentence, or both. He or she may also appeal from an order modifying the conditions of or revoking such an order or sentence.

(c) Appeals From Bail Orders by Defendant Before Conviction.

(1) *Appealability of Order With Respect to Bail.* Before conviction a defendant may appeal to the Appellate Court from an order setting, modifying, revoking, denying, or refusing to modify bail or the conditions thereof. As a prerequisite to appeal the defendant shall first present to the trial court a written motion for the relief to be sought on appeal. The motion shall be verified by the defendant and shall state the following:

(i) the defendant's financial condition;

(ii) his or her residence addresses and employment history for the past 10 years;

(iii) his or her occupation and the name and address of his or her employer, if he or she is employed, or his or her school, if he or she is in school;

(iv) his or her family situation; and

(v) any prior criminal record and any other relevant facts.

If the order is entered upon motion of the prosecution, the defendant's verified answer to the motion shall contain the foregoing information.

(2) *Procedure.* The appeal may be taken at any time before conviction by filing a verified motion for review in the Appellate Court. The motion for review shall be accompanied by a verified copy of the motion or answer filed in the trial court and shall state the following:

(i) the court that entered the order;

(ii) the date of the order;

(iii) the crime or crimes charged;

(iv) the amount and condition of bail;

(v) the arguments supporting the motion; and

(vi) the relief sought.

No brief shall be filed. The motion shall be served upon the opposing party. The State may promptly file an answer.

(3) *Disposition.* Upon receipt of the motion, the clerk shall immediately notify the opposing party by telephone of the filing of the motion, entering the date and time of the notification on the docket, and promptly thereafter present the motion to the court.

(4) *Report of Proceedings.* The court, on its own motion or on the motion of any party, may order court reporting personnel as defined in Rule 46 to file in the Appellate Court a report of all proceedings had in the trial court on the question of bail.

(5) *No Oral Argument.* No oral argument shall be permitted except when ordered on the court's own motion.

(d) Appeal by Defendant From a Judgment Entered Upon a Plea of Guilty. No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence,

if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment.

No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment. For purposes of this rule, a negotiated plea of guilty is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending.

The motion shall be in writing and shall state the grounds therefor. When the motion is based on facts that do not appear of record it shall be supported by affidavit unless the defendant is filing the motion *pro se* from a correctional institution, in which case the defendant may submit, in lieu of an affidavit, a certification as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109). The motion shall be presented promptly to the trial judge by whom the defendant was sentenced, and if that judge is then not sitting in the court in which the judgment was entered, then to the chief judge of the circuit, or to such other judge as the chief judge shall designate. The trial court shall then determine whether the defendant is represented by counsel, and if the defendant is indigent and desires counsel, the trial court shall appoint counsel.

If the defendant is indigent, the trial court shall order a copy of the transcript as provided in Rule 402(e) be furnished the defendant without cost. The defendant's attorney shall file with the trial court a certificate stating that the attorney has consulted with the defendant either by phone, mail, electronic means or in person to ascertain defendant's contentions of error in the sentence and the entry of the plea of guilty, has examined the trial court file and both the report of proceedings of the plea of guilty and the report of proceedings in the sentencing hearing, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings.

The motion shall be heard promptly, and if allowed, the trial court shall modify the sentence or vacate the judgment and permit the defendant to withdraw the plea of guilty and plead anew. If the motion is denied, a notice of appeal from the judgment and sentence shall be filed within the time allowed in Rule 606, measured from the date of entry of the order denying the motion. Upon appeal any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived.

The certificate of counsel shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article VI Forms Appendix.

(e) Appeal From an Order Finding Defendant Unfit to Stand Trial or Be Sentenced. The defendant or the State may appeal to the Appellate Court from an order holding the defendant unfit to stand trial or be sentenced.

(f) Appeal by Defendant on Grounds of Former Jeopardy. The defendant may appeal to the Appellate Court the denial of a motion to dismiss a criminal proceeding on grounds of former jeopardy.

(g) Appeal From an Order Granting a Motion to Disqualify Defense Counsel. The

defendant may petition for leave to appeal to the Appellate Court from an order of the circuit court granting a motion to disqualify the attorney for the defendant based on a conflict of interest. The procedure for bringing interlocutory appeals pursuant to this subpart shall be the same as set forth in Supreme Court Rule 306(c).

Amended effective July 1, 1969; amended October 21, 1969, effective January 1, 1970; amended effective October 1, 1970, July 1, 1971, November 30, 1972, September 1, 1974, and July 1, 1975; amended February 19, 1982, effective April 1, 1982; amended June 15, 1982, effective July 1, 1982; amended August 9, 1983, effective October 1, 1983; amended April 1, 1992, effective August 1, 1992; amended October 5, 2000, effective November 1, 2000; amended February 1, 2005, effective immediately; amended December 13, 2005, effective immediately; amended February 10, 2006, effective July 1, 2006; amended Nov. 28, 2012, eff. Jan. 1, 2013; amended Feb. 6, 2013, eff. immediately; amended Dec. 11, 2014, eff. immediately; amended Dec. 3, 2015, eff. immediately; amended March 8, 2016, eff. immediately; amended June 22, 2017, eff. July 1, 2017.

Committee Comment
(February 10, 2006)

Paragraph (g)

Paragraph (g) permits interlocutory review of certain attorney disqualification orders but does not change attorney disqualification law. The circuit court still has discretion to accept or reject a defendant's conflict of interest waiver, based on consideration of the interests identified in People v. Ortega, 209 Ill. 2d 354 (2004).

Committee Comments
(February 1, 2005)

The language in paragraph (a) allowing interlocutory appeals from orders decertifying a prosecution as a capital case or finding the defendant to be mentally retarded provides for the kinds of appeals contemplated by section 9–1(h-5) of the Criminal Code of 1961 (720 ILCS 5/9–1(h-5)) and section 114–15(f) of the Code of Criminal Procedure of 1963 (725 ILCS 5/114–15(f)).

Committee Comments
(Revised July 1, 1975)

Rule 604 was amended in September 1969 to add paragraph (b), dealing with appeals when probation has been granted. The 1969 amendment made what was formerly the entirety of Rule 604 into paragraph (a) and made an appropriate change in the title of the rule.

Paragraph (a)

Subparagraph (1) of paragraph (a) is former Rule 27(4), as it existed until January 1, 1967, with slight changes in language. (Rule 27(4) was derived from sections 121-1 and 120-2 of the Code.) The rule makes it clear that an order dismissing an indictment, information or complaint

for any of the grounds enumerated in section 114-1 of the Code is appealable.

Subparagraph (2) was added by amendment effective November 30, 1972.

Subparagraph (3) is former section 120-3(a) of the Code without change.

Subparagraph (4) is section 120-3(b) of the Code without change.

Paragraph (b)

Paragraph (b) is based upon sections 117-1(d) and 117-3(e) of the Code and is included in the rule in conformity with the policy of covering all appeals in the supreme court rules, as contemplated by the judicial article of the Constitution. (Ill. Const., art. VI, §16.) Paragraph (b) was amended in 1974 to cover conditional discharge and periodic imprisonment, new forms of sentence created by the adoption in Illinois of the Unified Code of Corrections.

Paragraph (c)

Paragraph (c) was added in 1971 to establish a procedure for appeals from orders in criminal cases concerning bail. Prior to its adoption, the only avenue of relief was an original petition to the Supreme Court for a writ of *habeas corpus*. Subparagraph (c)(2) was amended in 1974 to provide that the State may file an answer.

Paragraph (d)

Paragraph (d), added in 1975, provides that before a defendant may file a notice of appeal from a judgment entered on his plea of guilty, he must move in the trial court to vacate the judgment and withdraw his plea. Issues not raised in such a motion are waived. The time within which an appeal may be taken runs from the date on which the order disposing of the motion is entered. Provision is made for appointment of counsel and provision of a free transcript of the proceedings, which, under Rule 402(e), are required to be transcribed, filed, and made a part of the common law record.

Rule 605. Advice to Defendant

(a) On Judgment and Sentence After Plea of Not Guilty.

(1) In all cases in which the defendant is found guilty and sentenced to imprisonment, probation or conditional discharge, periodic imprisonment, or to pay a fine, or in which a sentence of probation or conditional discharge has been revoked or the conditions attached to such a sentence have been modified, excluding cases in which the judgment and sentence are entered on a plea of guilty, the trial court shall, at the time of imposing sentence or modifying the conditions of the sentence, advise the defendant of the right to appeal, of the right to request the clerk to prepare and file a notice of appeal, and of the right, if indigent, to be furnished, without cost to the defendant , with a transcript of the proceedings at the trial or hearing.

(2) In addition to the foregoing rights, in cases in which the defendant has been convicted

of a felony or a Class A misdemeanor or convicted of a lesser offense and sentenced to imprisonment, periodic imprisonment, or to probation or conditional discharge conditioned upon periodic imprisonment, or in which a sentence of probation or conditional discharge has been revoked or the conditions attached to such a sentence have been modified and a sentence or condition of imprisonment or periodic imprisonment imposed, the trial court shall advise the defendant of the right to have counsel appointed on appeal.

(3) At the time of imposing sentence or modifying the conditions of the sentence, the trial court shall also advise the defendant as follows:

A. that the right to appeal the judgment of conviction, excluding the sentence imposed or modified, will be preserved only if a notice of appeal is filed in the trial court within thirty (30) days from the date on which sentence is imposed;

B. that prior to taking an appeal, if the defendant seeks to challenge the correctness of the sentence, or any aspect of the sentencing hearing, the defendant must file in the trial court within 30 days of the date on which sentence is imposed a written motion asking to have the trial court reconsider the sentence imposed, or consider any challenges to the sentencing hearing, setting forth in the motion all issues or claims of error regarding the sentence imposed or the sentencing hearing;

C. that any issue or claim of error regarding the sentence imposed or any aspect of the sentencing hearing not raised in the written motion shall be deemed waived; and

D. that in order to preserve the right to appeal following the disposition of the motion to reconsider sentence, or any challenges regarding the sentencing hearing, the defendant must file a notice of appeal in the trial court within 30 days from the entry of the order disposing of the defendant's motion to reconsider sentence or order disposing of any challenges to the sentencing hearing.

(b) On Judgment and Sentence Entered on a Plea of Guilty. In all cases in which a judgment is entered upon a plea of guilty, other than a negotiated plea of guilty, at the time of imposing sentence, the trial court shall advise the defendant substantially as follows:

(1) that the defendant has a right to appeal;

(2) that prior to taking an appeal the defendant must file in the trial court, within 30 days of the date on which sentence is imposed, a written motion asking to have the trial court reconsider the sentence or to have the judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion;

(3) that if the motion is allowed, the sentence will be modified or the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made;

(4) that upon the request of the State any charges that may have been dismissed as a part of a plea agreement will be reinstated and will also be set for trial;

(5) that if the defendant is indigent, a copy of the transcript of the proceedings at the time of the defendant's plea of guilty and sentence will be provided without cost to the defendant

and counsel will be appointed to assist the defendant with the preparation of the motions; and

(6) that in any appeal taken from the judgment on the plea of guilty any issue or claim of error not raised in the motion to reconsider the sentence or to vacate the judgment and to withdraw the plea of guilty shall be deemed waived.

For the purposes of this rule, a negotiated plea is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending.

(c) On Judgment and Sentence Entered on a Negotiated Plea of Guilty. In all cases in which a judgment is entered upon a negotiated plea of guilty, at the time of imposing sentence, the trial court shall advise the defendant substantially as follows:

(1) that the defendant has a right to appeal;

(2) that prior to taking an appeal the defendant must file in the trial court, within 30 days of the date on which sentence is imposed, a written motion asking to have the judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion;

(3) that if the motion is allowed, the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made;

(4) that upon the request of the State any charges that may have been dismissed as a part of a plea agreement will be reinstated and will also be set for trial;

(5) that if the defendant is indigent, a copy of the transcript of the proceedings at the time of the defendant's plea of guilty and sentence will be provided without cost to the defendant and counsel will be appointed to assist the defendant with the preparation of the motions; and

(6) that in any appeal taken from the judgment on the plea of guilty any issue or claim of error not raised in the motion to vacate the judgment and to withdraw the plea of guilty shall be deemed waived.

For the purposes of this rule, a negotiated plea is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending.

Amended June 22, 1967, effective June 23, 1967; amended June 26, 1970, effective September 1, 1970; amended effective July 1, 1971, September 1, 1974, and July 1, 1975; amended April 1, 1992, effective August 1, 1992; amended October 5, 2000, effective November 1, 2000; amended October 1, 2001, effective immediately.

Committee Comments

(Revised July 1, 1975)

This rule is derived from former Rule 27(6), as it existed before 1967, which in turn was derived from section 121-4(c) of the Code of Criminal Procedure. In 1967 the requirement that the

stenographic transcript of the court's advice to the defendant and the defendant's answers be filed as a part of the common-law record was transferred to Rule 401, and the last sentence of the former rule was transferred to Rule 606(a).

This rule was amended in June, 1970, to add the last sentence, which requires the trial court to advise the defendant of the time within which his notice of appeal must be filed in order to preserve his right to appeal. See Rule 651(b) for a comparable provision.

The 1971 amendments remove the requirement that the court advise of their various rights defendants who plead guilty. They also extended the requirement that the advice be given in all cases, including misdemeanor cases, in which the defendant was convicted of an offense punishable by imprisonment for more than six months. In thus extending the requirement these amendments conformed the rule to the provisions of Rule 607, as amended the same year, dealing with the rights of indigents to appointed counsel and a report of proceedings. (See Committee Comments to that rule.) In 1974, Rule 607 was again amended to provide for a free transcript in all cases in which the defendant has been convicted and sentenced. Under the amended rule, however, the right to appointment of counsel is limited to cases in which the offense was a felony or a Class A misdemeanor, or in which the sentence involves some imprisonment, whether imposed as a sentence or as a condition to a sentence of probation or conditional discharge. This rule was again amended to conform its provisions with those of Rule 607. The language of both rules was changed to conform with the language of the Unified Code of Corrections.

In 1975, Rule 604(d) was added to provide that before appealing a judgment and sentence entered on a plea of guilty, the defendant must move in the trial court for vacation of the judgment and to withdraw the plea of guilty. Rule 605 was amended to designate the matter then contained in the rule as paragraph (a), and to add new paragraph (b), providing that on imposition of sentence the defendant shall be advised of the requirements of Rule 604(d).

Rule 606. Perfection of Appeal.

(a) How Perfected. Appeals shall be perfected by filing a notice of appeal with the clerk of the trial court. The notice may be signed by the appellant or his attorney. If the defendant so requests in open court at the time he is advised of his right to appeal or subsequently in writing, the clerk of the trial court shall prepare, sign, and file forthwith a notice of appeal for the defendant. No step in the perfection of the appeal other than the filing of the notice of appeal is jurisdictional.

(b) Time. Except as provided in Rule 604(d), the notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from or if a motion directed against the judgment is timely filed, within 30 days after the entry of the order disposing of the motion.

When a timely posttrial or postsentencing motion directed against the judgment has been filed by counsel or by defendant, if not represented by counsel, any notice of appeal filed before the entry of the order disposing of all pending postjudgment motions shall have no effect and shall be stricken by the trial court.

Upon striking the notice of appeal, the trial court shall forward to the appellate court within 5

days a copy of the order striking the notice of appeal, showing by whom it was filed and the date on which it was filed. This rule applies whether the timely postjudgment motion was filed before or after the date on which the notice of appeal was filed.

A new notice of appeal must be filed within 30 days following the entry of the order disposing of all timely postjudgment motions. Within 5 days of its being so filed a copy of the notice of appeal or an amendment of the notice of appeal shall be transmitted by the clerk of the circuit court to the clerk of the court to which the appeal is taken. Except as provided in paragraph (c) below, and in Rule 604(d), no appeal may be taken from a trial court to a reviewing court after the expiration of 30 days from the entry of the order or judgment from which the appeal is taken. The clerk of the appellate court shall notify any party whose appeal has been dismissed under this rule.

(c) Extension of Time in Certain Circumstances. On motion supported by a showing of reasonable excuse for failing to file a notice of appeal on time filed in the reviewing court within 30 days of the expiration of the time for filing the notice of appeal, or on motion supported by a showing by affidavit that there is merit to the appeal and that the failure to file a notice of appeal on time was not due to appellant's culpable negligence, filed in the reviewing court within six months of the expiration of the time for filing the notice of appeal, in either case accompanied by the proposed notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing. However, when the appellant is filing the motion *pro se* from a correctional institution, the appellant may submit, in lieu of the affidavit referred to herein, a certification as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109).

(d) Form of Notice of Appeal. The notice of appeal shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article VI Forms Appendix.

The notice of appeal may be amended as provided in Rule 303(b)(5).

(e) Notice of Appeal to be Sent by Clerk.

(1) *When Defendant Is Appellant and Action Is Prosecuted by the State.* When the defendant is the appellant and the action was prosecuted by the State, the clerk shall send the notice of appeal to the State's Attorney of the county in which the judgment was entered.

(2) *When Defendant Is Appellant and the Action Is Prosecuted by a Governmental Entity Other Than the State.* If the defendant is the appellant and the action was prosecuted by a governmental entity other than the State for the violation of an ordinance, the notice of appeal shall be sent to the chief legal officer of the entity (*e.g.*, corporation counsel, city attorney), or if his name and address do not appear of record, then to the chief administrative officer of the entity at his official address.

(3) *When the Prosecuting Entity Is the Appellant.* When the State or other prosecuting entity is the appellant, the notice of appeal shall be sent to the defendant and to his counsel.

(f) Docketing. Upon receipt of the notice of appeal transmitted to the reviewing court pursuant to paragraph (a) of this rule, or the entry of an order granting a motion for leave to appeal under paragraph (c) of this rule, the clerk of the reviewing court shall enter the appeal upon the docket.

(g) Docketing Statement; Filing Fee. Within 14 days after the filing of the notice of appeal and pursuant to notice to the appellee's attorney, the party filing the notice of appeal shall file with the clerk of the reviewing court a docketing statement, together with proof of service thereof, and the filing fee as required by Rule 313. The docketing statement shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article VI Forms Appendix.

Amended October 21, 1969, effective January 1, 1970; amended effective July 1, 1971, July 1, 1975, and February 17, 1977; amended July 15, 1979, effective October 15, 1979; amended April 27, 1984, effective July 1, 1984; amended August 27, 1999, effective immediately; amended October 22, 1999, effective December 1, 1999; amended December 13, 2005, effective immediately; amended July 27, 2006, effective September 1, 2006; amended March 20, 2009, effective immediately; amended Dec. 12, 2012, eff. Jan. 1, 2013; amended Feb. 6, 2013, eff. immediately; amended Dec. 11, 2014, eff. immediately; amended June 22, 2017, eff. July 1, 2017; amended Mar. 12, 2021, eff. immediately.

Rule 607. Appeals by Indigent Defendants.

(a) Appointment of Counsel. Upon the filing of a notice of appeal in any case in which the defendant has been found guilty of a felony or a Class A misdemeanor, or in which he has been found guilty of a lesser offense and sentenced to imprisonment or periodic imprisonment, or to probation or conditional discharge conditioned upon periodic imprisonment, or in which a sentence of probation or conditional discharge has been revoked or the conditions attached to such a sentence modified and a sentence of imprisonment or periodic imprisonment imposed, and in cases in which the State appeals, the trial court shall determine whether the defendant is represented by counsel on appeal.

If not so represented, and the court determines that the defendant is indigent and desires counsel on appeal, the court shall appoint counsel on appeal. Compensation and reimbursement for expenses of appointed attorneys shall be as provided by statute.

(b) Report of Proceedings. Upon finding by the court that the defendant is indigent, the court reporting personnel as defined in Rule 46 shall transcribe, certify, and file the report of proceedings with the clerk of the trial court as directed by the appellate court docketing order.

(1) On direct appeal of any case in which the defendant has been found guilty and sentenced to imprisonment, probation or conditional discharge, or periodic imprisonment, or to pay a fine, or in which a hearing has been held resulting in the revocation of or modification of the conditions of probation or conditional discharge, the defendant shall receive a copy of the report of the proceedings at his trial or hearing without charge. The clerk of the trial court shall transmit one printed copy of the filed report of proceedings to the defendant.

(2) If the conduct on which the case was based was also the basis for a juvenile proceeding that was dismissed so that the case could proceed, the defendant shall receive a copy of the report of proceedings in the juvenile proceeding without charge. The clerk of the trial court shall transmit one printed copy of the filed report of proceedings to the defendant.

(3) In subsequent collateral appeals the report of proceedings shall be provided to the

defendant only upon written request from defendant's appointed counsel to the clerk of the circuit court specifying the date of the report of proceedings requested. The clerk of the trial court, upon receiving such a request from defendant's counsel, shall then transmit one printed copy of the specified report of proceedings to the defendant.

(4) The clerk of the trial court shall provide only one copy of any report of proceedings to the indigent defendant pursuant to the above procedure.

(5) The court reporting personnel who prepare reports of proceedings under this rule shall be paid pursuant to a schedule of charges approved by the public employer and employer representative for the court reporting personnel.

(c) Filing Fees Excused. If the defendant is represented by court-appointed counsel, the clerk of the reviewing court shall docket the appeal and accept documents for filing without the payment of fees.

(d) Paper Copies of Briefs or Petitions for Leave to Appeal. If the defendant is represented by court-appointed counsel, unless electronically filed, the clerk of the Supreme Court shall accept for filing not less than 13 legible paper copies of briefs or petitions for leave to appeal or answers thereto; and the clerks of the Appellate Court shall accept for filing not less than 6 legible paper copies of briefs if required by the electronic filing policy of the Appellate Court.

Amended effective June 23, 1967; amended October 21, 1969, effective January 1, 1970; amended effective July 1, 1971; amended June 28, 1974, effective September 1, 1974; amended September 29, 1978, effective November 1, 1978; amended July 30, 1979 and September 20, 1979, effective October 15, 1979; amended April 7, 1993, effective June 1, 1993; amended September 22, 1997, effective January 1, 1998; amended September 30, 2002, effective immediately; amended December 13, 2005, effective immediately; amended Feb. 6, 2013, eff. immediately; amended June 22, 2017, eff. July 1, 2017.

Committee Comments
(Revised 1979)

Paragraph (a)

As adopted effective January 1, 1967, this paragraph was former Rule 27(18) with no substantial change except to provide that counsel other than the public defender may be appointed only in the discretion of the court. Rule 27(18) was derived from section 121-13(b) of the Code of Criminal Procedure. This provision harmonized the rule with the provisions of section 113-3 of the Code, as amended by the 1965 General Assembly.

As adopted in 1967, paragraph (a) provided for the appointment of counsel on appeal only in cases in which the defendant had been convicted of a crime punishable by imprisonment in the penitentiary. In 1971, the rule was amended to extend the right to appointed counsel to cases in which the defendant had been convicted of an offense punishable by imprisonment for more than six months. The term "criminal" was dropped to make it plain that the rule applied to ordinance

violation cases in which the penalty could exceed six months' imprisonment. in 1974, after the decision in *Argersinger v. Hamlin* (1972), 407 U.S. 25, extending the right to counsel to all cases in which any imprisonment is actually imposed, paragraph (a) was amended to bring it in accord with the decision. At the same time the limitation on appointment of counsel other than the public defender was deleted.

Paragraph (b)

As adopted effective January 1, 1967, this paragraph was former Rule 27(9)(b) without substantial change. Rule 27(9)(b) was derived from earlier Rule 65-1(1), repealed effective January 1, 1964.

Like paragraph (a), this paragraph originally applied only to cases in which the defendant had been convicted of a crime punishable by imprisonment in the penitentiary. In 1971, it was amended to apply to cases in which the defendant had been convicted of an offense (including ordinance violations) punishable by more than six months' imprisonment. In 1974, it was amended to conform to the requirements set out in *Mayer v. City of Chicago* (1971), 404 U.S. 189, where it was held that a defendant convicted of an ordinance violation punishable by fine only is entitled, if indigent, to receive a free transcript of the proceedings at the trial. As presently worded, paragraph (b) provides that a defendant found guilty of any offense and sentenced to any of the sentences provided for in the Unified Code of Corrections (see Ill. Rev. Stat. 1973, ch. 38, par. 1005-5-3) may proceed under the rule.

Paragraph (b) was amended in October 1969 to provide explicitly that an indigent juvenile convicted of a felony after dismissal of a juvenile proceeding involving the facts on which the felony case is based is entitled to a report of proceedings of the juvenile proceeding. The need for insuring the availability of such a transcript was underscored by *People v. Jiles,* 43 Ill. 2d 145, 251 N.E.2d 529 (1969). The reference to "a felony case" in this provision was changed in 1971 to "that case," referring to any case that falls within the general coverage of the rule, meaning, since 1974, any case in which the defendant has been found guilty of an offense and sentenced. In 1978 paragraph (b) was amended to provide that upon written request the copy of the report of proceedings made for the defendant shall be delivered to the defendant's attorney of record, if he has one, and otherwise, on written request, released to the defendant or his guardian or custodian. This change was designed to avoid confusion over the delivery of the copy and leave a record of its delivery.

Paragraphs (c) and (d)

These provisions, new in 1967, codified existing Supreme Court practice.

In 1979, Rule 342 was amended to provide that with the exception of stated documents (see Rule 342(a)), no portions of the record shall be reproduced. Rule 317 was amended to reflect this change in the practice. See the committee comments to Rule 342.

Commentary
(September 22, 1997)

This amendment of Rule 607(b) directing the preparation of an additional copy of the report of proceedings in a case in which a death sentence is imposed is a necessary complement to Rule 608, amended September 22, 1997, effective January 1, 1998, which requires the preparation and filing of a duplicate record on appeal, in addition to the original, in death sentence cases.

Rule 608. The Record on Appeal.

(a) Designation and Contents. The clerk of the circuit court shall prepare the record on appeal upon the filing of a notice of appeal as directed by the appellate court docketing order. The record on appeal must contain the entire record of the circuit court including all documents within the common-law portion of the record, all reports of proceedings of each court appearance from the filing of the charge(s) in the circuit court forward, and all exhibits, and shall be compiled and transmitted to the clerk of the appellate court as directed by the Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal, with the following:

(1) a certificate of the clerk showing the impaneling of the grand jury if the prosecution was commenced by indictment;

(2) the indictment, information, or complaint;

(3) a transcript of the proceedings at the defendant's arraignment and plea;

(4) all motions, transcript of motion proceedings, and orders entered thereon;

(5) all arrest warrants, search warrants, consent to search forms, eavesdropping orders, and any similar documents;

(6) a transcript of proceedings regarding waiver of counsel and waiver of jury trial, if any;

(7) the report of proceedings, including opening statements by counsel, testimony offered at trial, and objections thereto, offers of proof, arguments and rulings thereon, the instructions offered and given, and the objections and rulings thereon, closing argument of counsel, communications from the jury during deliberations, and responses and supplemental instructions to the jury and objections, arguments and rulings thereon; the court reporting personnel as defined in Rule 46 shall take the record of the proceedings regarding the selection of the jury, but the record need not be transcribed unless a party designates that such proceedings be included in the record on appeal;

(8) exhibits offered at trial and sentencing, along with objections, offers of proof, arguments, and rulings thereon; except that physical and demonstrative evidence, other than photographs, which do not fit on a standard size record page shall not be included in the record on appeal unless ordered by a court upon motion of a party or upon the court's own motion;

(9) the verdict of the jury or finding of the court;

(10) post-trial motions, including motions for a new trial, motions in arrest of judgment, motions for judgment notwithstanding the verdict and the testimony, arguments and rulings thereon;

(11) transcript(s) of proceedings at sentencing, including the presentence investigation report, testimony offered and objections thereto, offers of proof, argument, and rulings thereon, arguments of counsel, and statements by the defendant and the court;

(12) the judgment and sentence; and

(13) the notice of appeal, if any.

Within 14 days after the notice of appeal is filed the appellant and the appellee may file a designation of additional portions of the circuit court record to be included in the record on appeal. Thereupon the clerk shall include those portions in the record on appeal. Additionally, upon motion of a party, the court may allow photographs of exhibits to be filed as a supplement to the record on appeal, in lieu of the exhibits themselves, when such photographs accurately depict the exhibits themselves. There is no distinction between the common law record and the report of proceedings, for the purpose of determining what is properly before the reviewing court.

(b) Report of Proceedings; Time. The report of proceedings contains the testimony and exhibits, the rulings of the trial judge, and all other proceedings before the trial judge, unless the parties designate or stipulate for less. It shall be certified by court reporting personnel or the trial judge and shall be filed in the trial court within 49 days after the filing of the notice of appeal. The report of proceedings shall be taken as true and correct unless shown to be otherwise and corrected in a manner permitted by Rule 329.

(c) Time for Filing Record on Appeal. The record shall be filed in the reviewing court within 63 days from the date the notice of appeal is filed in the trial court. If the time for filing the report of proceedings has been extended, the record on appeal shall be filed within 14 days after the expiration of the extended time.

(d) Extensions of Time. The reviewing court or any judge thereof may extend the time for filing, in the trial court, the report of proceedings or agreed statement of facts or for serving a proposed report of proceedings, on notice and motion filed in the reviewing court before the expiration of the original or extended time, or on notice and motion filed within 35 days thereafter. Motions for extensions of time shall be supported by an affidavit showing the necessity for extension. Motions made after expiration of the original or extended time shall be further supported by a showing of reasonable excuse for failure to file the motion earlier. However, when a motion for extension of time is filed *pro se* from a correctional institution, the movant may submit, in lieu of the affidavit referred to herein, a certification as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109).

Amended October 21, 1969, effective January 1, 1970; amended September 29, 1978, effective November 1, 1978; amended July 30, 1979, effective October 15, 1979; amended February 19, 1982, effective April 1, 1982; amended July 3, 1986, effective August 1, 1986; amended September 22, 1997, effective January 1, 1998; amended December 13, 2005, effective immediately; amended Feb. 6, 2013, eff. immediately; amended Apr. 8, 2013, eff. immediately; amended Dec. 11, 2014, eff. immediately; amended June 22, 2017, eff. July 1, 2017.

Committee Comments
(Revised July 3, 1986)

Paragraph (a)

This is former Rule 27(8) with certain changes. Former Rule 27(8) was derived from section 121-7(b) of the Code of Criminal Procedure of 1963 and earlier Rule 65-2, repealed effective January 1, 1964.

Paragraph (a) provided for the appellant, within 14 days of the filing of the notice of appeal, to file a designation of portions of the circuit court record to be included in the record on appeal. The appellee, within seven days thereafter, could file a designation of additional portions to be included. The paragraph further provided for the clerk to prepare the record on appeal containing the designated portions of the circuit court record or, if no designation was filed, to prepare a mandatory record containing the documents specified in the paragraph.

In 1986, paragraph (a) was amended to require the immediate preparation of a mandatory record on appeal, in all cases, upon the filing of the notice of appeal, without the need for any designation by the parties. The amendment expanded the portions of the circuit court record which must be included in the record on appeal and allows the parties to designate additional portions to be included.

Subsection (9) of paragraph (a) requires that the record on appeal in all cases where a sentence of death is imposed include a transcript of all proceedings regarding the selection of the jury. This subsection also requires the court reporters in other cases to take notes of the jury-selection proceedings, but the transcription of such notes is required only when requested by a party. The "proceedings regarding the selection of the jury" include the procedures set forth by the circuit court for the selection of the jury and for the exercise of peremptory challenges, the questions asked of prospective jurors, the responses thereto, questions refused by the court, along with objections, argument and rulings thereon.

Subsection (10) of paragraph (a) requires that all exhibits offered at trial and sentencing be included in the record on appeal. An exception to this requirement was added for exhibits, other than photographs, which are large, bulky or otherwise do not fit easily in the record on appeal. Examples of such exhibits include weapons, clothing, narcotics, charts and models. The court, however, should order such exhibits to be included in the record on appeal when they are relevant to the determination of an issue on appeal or needed for an understanding of the case. Photographs offered as exhibits are to be included in the record on appeal.

Paragraph (a), as amended in 1986, allows the filing of a supplemental record on appeal containing photographs of exhibits. The use of the photographs in lieu of the exhibits themselves should be permitted when the exhibits are large, bulky or otherwise do not fit easily in the record on appeal and the photographs of the exhibits are sufficient for the determination of the issues on appeal and for an understanding of the case.

Photographs of oversized photographic exhibits are permitted under this rule.

Paragraph (d)

Paragraph (d), as amended in 1979, applies to criminal cases the same time limitations on extensions of time to file the report of proceedings in the trial court and to file the record on appeal in the reviewing court imposed in civil cases by Rules 323(e) and 326.

The 1981 amendment places the sole authority for granting extensions of time under paragraph (d) in the reviewing court. (The trial judges remain vested with the authority to grant extensions in a narrow class of cases pursuant to Rule 608(c).)

The provision permitting a grant of an extension of time to file the report of proceedings or the record on appeal within 6 months after the entry of the judgment, added in 1969, was deleted by the 1979 amendments.

Commentary
(September 22, 1997)

This rule is amended to provide for the preparation and filing of a duplicate record in a case in which a death sentence is imposed so that the parties may use the duplicate in any collateral proceedings. The availability of a certified, duplicate record will be advantageous in situations in which post-conviction proceedings must be commenced in the trial court within the time prescribed by the Post-Conviction Hearing Act (725 ILCS 5/122-1 (West 1996)) or other papers must be filed in those proceedings and the direct appeal still is pending in the Supreme Court, rendering the record unavailable.

Photographic exhibits need not be duplicated for purposes of this amendment.

Paragraph (c) also is amended to eliminate the shorter record-filing time for capital cases, consistent with practice.

Rule 609. Stays

(a) Imprisonment or Confinement. If an appeal is taken from a judgment following which the defendant is sentenced to imprisonment or periodic imprisonment, or to probation or conditional discharge conditioned upon periodic imprisonment, or from an order revoking or modifying the conditions attached to a sentence of probation or conditional discharge and imposing a sentence of imprisonment or periodic imprisonment, the defendant may be admitted to bail and the sentence or condition of imprisonment or periodic imprisonment stayed, with or without bond, by a judge of the trial or reviewing court. Upon motion showing good cause the reviewing court or a judge thereof may revoke the order of the trial court or order that the amount of bail be increased or decreased.

(b) Other Cases. On appeals in other cases the judgment or order may be stayed by a judge of the trial or reviewing court, with or without bond. Upon motion showing good cause the reviewing court or a judge thereof may revoke the order of the trial court or order that the amount of bail be increased or decreased.

Amended October 21, 1969, effective January 1, 1970; amended June 28, 1974, effective September 1, 1974; amended Feb. 6, 2013, eff. immediately.

Committee Comments
(Revised September 1, 1974)

This rule is former Rule 27(16) with language changes for clarification. Rule 27(16) was derived from section 121-6 of the Code of Criminal Procedure of 1963. In 1974, paragraph (b) of the rule was amended to conform its language to that used in the Unified Code of Corrections, enacted effective January 1, 1973, as sections 1-1-1 through 8-6-1, setting forth the types of sentences available to the trial court in criminal proceedings and making provision for the modification of sentences imposed upon conditions. The 1974 amendment to the rule also permits stay of a sentence or condition of imprisonment "with or without bond."

Rule 610. Motions.

(a) Motions in reviewing courts shall be governed by Rule 361.

(b) In addition to the requirements set forth in Rule 361, every motion for extension of time in a criminal case shall be supported by an affidavit or a certification as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109) showing the following:

(1) the date on which counsel was engaged or appointed to prosecute the appeal;

(2) the number of days requested and the number of days granted on each of the previous motions for extension of time filed by the movant, and the total number of days granted on all of those previous motions;

(3) the total number of days requested and the total number of days granted on all of the previous motions for extension of time filed by other parties;

(4) the details of the case, including (i) the offenses of which the defendant was convicted, (ii) whether the conviction was the result of a bench or jury trial, (iii) the length of the sentence imposed, (iv) the date of the sentence, (v) the date on which the complete record was filed in the reviewing court and the length of the record, and (vi) whether the defendant is currently incarcerated and, if so, the defendant's projected release date;

(5) the reason for the present request for an extension and counsel's realistic expectation of the length of time needed to prepare and file the brief.

The purpose of this paragraph is the achievement of prompt preparation and disposition of criminal cases in the reviewing courts, and motions for extension of time are looked upon with disfavor.

(c) Before filing a motion for extension of time in a criminal case, counsel shall confer with opposing counsel and inquire as to whether opposing counsel intends to file an objection. The results of that inquiry shall be stated in the motion in order to allow the court to rule upon the motion without waiting until the time for filing responses has expired. If counsel is unable to confer with opposing counsel, an explanation shall be stated in the motion.

(d) In addition to the requirement of Rule 361, unless filed electronically, motions in the Supreme Court for the second, third, fourth, and fifth judicial districts shall be filed with the clerk in Springfield, and motions for the first judicial district (Cook County) shall be filed with the clerk in the Chicago satellite office.

Amended September 29, 1978, effective November 1, 1978; amended Dec. 11, 2014, eff. immediately; amended June 22, 2017, eff. July 1, 2017; amended Sept. 17, 2019, eff. immediately.

Committee Comments

(Revised September 29, 1978)

This rule is an amalgam of former Rules 49 and 49-1, and is applicable to criminal cases in both the Supreme Court and the Appellate Court.

Prior to amendment in 1978, paragraph (3) provided that a motion for extension of time should include the number of extensions previously obtained from the reviewing court and the reason for each such extension. In 1978, this requirement was made applicable to civil cases by the addition of Rule 361(g), and accordingly paragraph (3) was rescinded and paragraph (4) became paragraph (3). Since motions in criminal cases are generally governed by Rule 361, this makes no change in the practice in criminal appeals.

Rule 611. Oral Argument

(a) Sequence and Manner of Calling. The sequence and manner of calling cases for oral argument is governed by Rule 351 and priority shall be given to appeals in criminal cases over appeals in civil cases.

(b) Other Matters. In other respects oral argument is governed by Rule 352.

Amended Feb. 6, 2013, eff. immediately.

Committee Comments

This is former Rule 27(15) with language changes for clarification. Rule 27(15) was derived in part from section 121-12(c) of the Code of Criminal Procedure of 1963.

Rule 612. Number of Copies to Be Filed; Procedural Matters Which Are Governed by Civil Appeals Rules .

(a) Unless filing electronically, in addition to the requirements of the below-listed civil rules, the clerk of the Supreme Court shall accept for filing in Springfield not less than 13 legible copies of petitions for leave to appeal and answers thereto, briefs, and petitions for rehearing and any answer or reply thereto. The clerks of the Appellate Court shall accept for filing not less than 9 legible copies of briefs and petitions for rehearing and any answer or reply thereto. In the Supreme Court, the copies of petitions for rehearing shall be delivered or mailed by first-class mail or

delivered by third-party commercial carrier, and a certificate of mailing or delivery shall be supplied to the clerk of the Supreme Court. The service and proof of service requirements contained in Rules 315, 341, and 367 shall apply.

(b) The following civil appeals rules apply to criminal appeals insofar as appropriate:

(1) Dismissal of appeals by the trial court: Rule 309.

(2) Appeals to the Supreme Court: Rules 302(b), 302(c), 315, 316, 317, and 318.

(3) Procedure if no verbatim transcript is available and procedure for an agreed statement of facts: Rules 323(c) and (d).

(4) Preparation and certification of record on appeal by clerk: Rule 324.

(5) Transmission of record on appeal: Rule 325. (If the defendant is represented by court-appointed counsel, no fees need be paid to the clerk of the trial court.)

(6) Notice of filing: Rule 327.

(7) Amendment of the record on appeal: Rule 329.

(8) Return of any paper or physical components of the record on appeal: Rule 331.

(9) Contents, form, length, number of paper copies, *etc.*, of briefs: Rule 341.

(10) Times for filing and serving briefs: Rule 343.

(11) Briefs *amicus curiae*: Rule 345.

(12) Inspection of exhibits: Rule 363.

(13) Appeal to wrong court: Rule 365.

(14) Rehearing in reviewing courts: Rule 367.

(15) Issuance, stay, and recall of mandates from reviewing court: Rule 368.

(16) Process in reviewing courts: Rule 370.

(17) Removing records from the reviewing court: Rule 372.

(18) Constructive date of filing documents in reviewing court: Rule 373.

(19) Redaction of personal identifiers for documents filed in courts of review: Rule 364.

Amended October 21, 1969, effective January 1, 1970; amended effective January 1, 1970, and July 1, 1971; amended July 30, 1979, effective October 15, 1979; amended September 22, 1997, effective January 1, 1998; amended May 24, 2006, effective September 1, 2006; amended July 27, 2006, effective September 1, 2006; amended Feb. 6, 2013, eff. immediately; amended Dec. 3, 2015, eff. July 1, 2016; amended June 22, 2017, eff. July 1, 2017.

Committee Comments

(Revised 1979)

This rule was new in 1967. It cross-refers to all of the civil appeals rules that are applicable to criminal appeals.

The references to an agreed statement of facts, as provided in Rule 323(d), and to the

constructive date of filing papers in the reviewing court, as provided in Rule 373, were added in 1969. The reference to Rule 302(b), which deals with by-passing the Appellate Court in appeals in cases in which the public interest requires expeditions determinations, was added in 1971.

In 1971, former paragraph (g), referring to the short record provided by repealed Rule 328, was deleted, and the successive paragraphs relettered. Newly lettered paragraphs (i), (k), and (l) were amended to reflect changes in Rules 342, 343, and 344. See the committee comments to those rules.

Rule 613. Mandate of Reviewing Court

(a) In all cases the reviewing court shall direct the appellate or trial court to proceed in accordance with the mandate.

(b) Reversal When Appellant Is Serving Sentence. If in a case on appeal the appellant is serving the sentence imposed in the trial court and the judgment is reversed and appellant ordered discharged, the clerk of the reviewing court shall at once mail to the imprisoning officer, certified mail, return receipt requested, a copy of the mandate of the reviewing court. It shall be the duty of the imprisoning officer to release appellant from custody forthwith upon receiving a certified copy of the mandate of the reviewing court. If appellant is serving the sentence and the judgment is reversed and the cause remanded to the trial court for further proceedings, the clerk of the reviewing court shall at once mail to the imprisoning officer, certified mail, return receipt requested, a copy of the mandate of the reviewing court. The imprisoning officer shall forthwith, upon receiving the certified copy of the mandate of the reviewing court, return appellant to the trial court to which the cause was remanded.

(c) Credit for Time Served Pending Appeal. In any case in which, pending appeal, an appellant serves any portion of the sentence imposed in the trial court and the judgment of the trial court is reversed by a reviewing court and a new trial ordered, the appellant shall be given credit in any subsequent sentence for the time served pending appeal.

Amended June 26, 1987, effective August 1, 1987; amended September 22, 1997, effective immediately; amended Feb. 6, 2013, eff. immediately.

Committee Comments

This is section 121-14 of the Code of Criminal Procedure of 1963, with some language changes for clarification. Although it was not part of former Rule 27, the committee recommended that it be made part of the supreme court rules in keeping with the effort to place all provisions concerning appellate practice in a single body of rules.

Rule 614. Notifying Prisoner of Affirmance by Appellate Court

When a judgment of conviction of a person incarcerated in a penal institution is affirmed by the Appellate Court, the clerk of that court shall at once mail to the prisoner a copy of the opinion of the court, certified mail, return receipt requested, in an envelope marked, "OFFICIAL LEGAL

MAIL—ADDRESSEE MUST ACKNOWLEDGE RECEIPT IN WRITING." The clerk shall note the date of mailing upon the records of the court.

Amended June 26, 1987, effective August 1, 1987.

Committee Comments

This is taken from former Rule 27(13), which was adopted by the Supreme Court on January 25, 1966, because of a number of cases in which defendants represented by appointed counsel had not learned of the affirmance of their cases until after the time for filing a petition to the Supreme Court for leave to appeal had expired.

Rule 615. The Cause on Appeal

(a) Insubstantial and Substantial Errors on Appeal. Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court.

(b) Powers of the Reviewing Court. On appeal the reviewing court may:

(1) reverse, affirm, or modify the judgment or order from which the appeal is taken;

(2) set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken;

(3) reduce the degree of the offense of which the appellant was convicted;

(4) reduce the punishment imposed by the trial court; or

(5) order a new trial.

Committee Comments

This is section 121-9 of the Code of Criminal Procedure of 1963 without change in substance.

Rules 616-50. Reserved

Rule 651. Appeals in Post-Conviction Proceedings

(a) Right of Appeal. An appeal from a final judgment of the circuit court in any postconviction proceeding shall lie to the Appellate Court in the district in which the circuit court is located.

(b) Notice to Petitioner of Adverse Judgment. Upon the entry of a judgment adverse to a petitioner in a postconviction proceeding, the clerk of the trial court shall at once mail or deliver to the petitioner a notice in substantially the following form:

"You are hereby notified that on _____ the court entered an order, a copy of which is enclosed herewith. You have a right to appeal to the Illinois Appellate Court in the district in which the circuit court is located. If you are indigent, you have a right to a transcript of the

record of the postconviction proceedings and to the appointment of counsel on appeal, both without cost to you. To preserve your right to appeal you must file a notice of appeal in the trial court within 30 days from the date the order was entered."

(c) Record for Indigents; Appointment of Counsel. Upon the timely filing of a notice of appeal in a postconviction proceeding, if the trial court determines that the petitioner is indigent, the procedures for appointment of counsel and provision of the report on proceedings shall be governed by Rule 607. In a postconviction proceeding, the appellant or appellant's counsel shall, upon written request, be provided the postconviction report of proceedings and any relevant report of proceedings not previously provided to the appellant or appellant's counsel.

The record filed in that court shall contain a showing, which may be made by the certificate of petitioner's attorney, that the attorney has consulted with petitioner by phone, mail, electronic means or in person to ascertain his or her contentions of deprivation of constitutional rights, has examined the record of the proceedings at the trial, and has made any amendments to the petitions filed *pro se* that are necessary for an adequate presentation of petitioner's contentions.

(d) Procedure. The procedure for an appeal in a post-conviction proceeding shall be in accordance with the rules governing criminal appeals.

Amended effective January 1, 1969; amended October 21, 1969, effective January 1, 1970; amended effective July 1, 1971; amended November 30, 1984, effective December 1, 1984; amended April 26, 2012, eff. immediately; amended Feb. 6, 2013, eff. immediately; amended June 22, 2017, eff. July 1, 2017.

Committee Comments

(Revised November 30, 1984)

This rule was drawn from former Rule 27-1, in effect from January 1, 1964, to January 1, 1967. Paragraph (a) was added.

Paragraphs (b) and (c) were amended effective January 1, 1969, by adding the references to appointment of counsel on appeal. Minor language changes were also made at that time.

The last sentence of Rule 651(c) was added in 1969 to implement the decisions of the court with respect to the responsibilities of an attorney representing an indigent prisoner in a post-conviction proceeding. *People v. Garrison* (1969), 43 Ill. 2d 121; *People v. Jones* (1969), 43 Ill. 2d 160; *People v. Slaughter* (1968), 39 Ill. 2d 278, 285.

In 1971 Rule 651 was amended to provide that appeals in post-conviction proceedings lie to the Appellate Court. Prior to that time, the appeal lay directly to the Supreme Court.

Paragraphs (a), (b), and (c) were amended in 1984 by providing that appeals from post-conviction proceedings involving a judgment imposing a sentence of death shall lie directly to the Supreme Court as a matter of right.

Rules 652-59. Reserved

Rule 660. Appeals in Cases Arising Under the Juvenile Court Act

(a) Delinquent Minors. Appeals from final judgments in delinquent minor proceedings, except as otherwise specifically provided, shall be governed by the rules applicable to criminal cases.

(b) Other Proceedings. In all other proceedings under the Juvenile Court Act, appeals from final judgments shall be governed by the rules applicable to civil cases.

(c) All Proceedings. In all appeals filed from proceedings under the Juvenile Court Act, the minor(s) shall be identified by first name and last initial or by initials only. The preferred method is first name and last initial. The alternative method of initials only is to be used when, due to an unusual first name or spelling, the preferred method would create a substantial risk of revealing a minor's identity. The name(s) of the involved minor(s) shall not appear on any documents filed with the Appellate Court or any subsequent court.

Adopted September 8, 1975, effective October 1, 1975; amended July 1, 1985, effective August 1, 1985; amended October 1, 2001, effective immediately.

Committee Comments

Rule 660 was added in 1975 to clarify the procedure in appeals from determinations under the Juvenile Court Act. It provides simply that appeals from determinations in delinquency proceedings are governed by the rules applicable to appeals in criminal cases, and all other appeals under the Act are governed by the rules governing appeals in civil cases.

Paragraph (b) was amended in 1985 to delete references to "minors in need of supervision," "neglected minors" and "dependent minors," because of various additions, deletions and changes in the labels which are now applied to minors who may be adjudicated wards in proceedings before the circuit court.

Paragraph (c) was added effective October 1, 2001, to help protect the identities of minors. The amendment requires that their first name and last initial, or their initials only, appear on documents filed with the Appellate Court or any subsequent court. The requirement covers the parties' briefs, motions, and other similar papers. The amendment does not require deletion of names from the trial court record in preparing the record on appeal, nor does it address the means by which the Appellate Court or a subsequent court maintains the confidentiality of documents appearing in the record.

Rule 660A. Expedited Appeals in Delinquent Minor Cases

The expedited procedures in this rule shall apply to appeals from final judgments in delinquent minor proceedings arising under the Juvenile Court Act.

(a) *Special Caption; Service of Notice of Appeal on Trial Judge.* The notice of appeal or petition for leave to appeal, docketing statement, briefs and all other notices, motions and pleadings filed by any party in relation to an appeal involving a delinquent minor case under the Juvenile

Court Act shall include the following statement in bold type on the top of the front page: **THIS APPEAL INVOLVES A DELINQUENT MINOR PROCEEDING UNDER THE JUVENILE COURT ACT.** When the notice of appeal is filed pursuant to the provisions of Rule 606(b), it shall also be served on the trial judge.

(b) *Status Hearing in Circuit Court.* Upon receipt of the notice of appeal in a delinquent minor case arising under the Juvenile Court Act, the trial judge shall take any and all action necessary to expedite preparation of the record on appeal. The trial court shall have continuing jurisdiction for the purpose of enforcing the rules for preparation of the record. The trial court may request the assistance of the chief judge to resolve filing delays, and the chief judge shall assign or reassign the court reporting personnel's work as necessary to ensure compliance with the filing deadlines.

(c) *Record*. The record on appeal shall be filed in the appellate court no later than 35 days after the filing of the notice of appeal or granting of leave to appeal. Any request for extension of the time for filing shall be accompanied by an affidavit of the court clerk or court reporting personnel stating the reason for the delay, and shall be served on the trial judge and the chief judge of the circuit. Lack of advance payment shall not be a reason for noncompliance with filing deadlines for the record or transcript. Any subsequent request for an extension of time shall be made to the appellate court by written notice and motion to all parties in accordance with rules.

(d) *Time for Filing of Briefs in the Appellate Court.* Unless otherwise ordered by the appellate court, the brief of the appellant shall be filed in the reviewing court within 28 days from the filing of the record on appeal. Within 28 days from the due date of the appellant's brief, the appellee shall file a brief in the reviewing court. Within 7 days from the due date of the appellee's brief, the appellant may file a reply brief in the reviewing court.

(e) *Oral Argument.* If oral argument is requested by a party, a reviewing court shall, no later than seven days from the due date of appellant's reply brief, determine whether the case should be called for oral argument.

(f) *Deadline for Decision.* Except for good cause shown, the appellate court shall file its decision within 150 days after the filing of the notice of appeal.

(g) *Extensions of Time Disfavored.* Requests for extensions of time are disfavored and shall be granted only for compelling circumstances.

(h) *Effective Date*. This rule shall apply to all orders in which a notice of appeal is filed after its effective date.

Adopted Mar. 15, 2013, eff. May 1, 2013; amended May 23, 2013, eff. July 1, 2013; amended Apr. 3, 2018, eff. July 1, 2018.

Rule 661. Appeals as Poor Persons by Minors Found To Be Delinquent

Upon the filing of a notice of appeal in any proceeding in which a minor has been found to be delinquent, or in which probation or conditional discharge imposed in such a proceeding has been revoked, appointment of counsel and the provision of a transcript of the adjudicatory and dispositional hearings without cost to the minors shall be governed by Rule 607.

Adopted effective May 29, 1968; amended September 8, 1975, effective October 1, 1975.

Committee Comments

(October 1, 1975)

Prior to 1975, Rule 661 set forth the procedure for obtaining counsel and a free transcript of the proceedings below in cases in which an appeal is taken from a delinquency proceeding in the juvenile court. This procedure was the same as that provided in Rule 607 in the case of appeals from judgments in criminal cases. In 1975, Rule 660 was added, making the rules dealing with appeals in criminal cases generally applicable to delinquency proceedings. It was thus unnecessary to repeat the substance of Rule 607 in Rule 661. Because Rule 607, by its terms, applies only to appeals from certain types of criminal cases, it was necessary to retain Rule 661 to make it plain that Rule 607 applies.

Rule 662. Adjudication of Wardship and Revocation of Probation or Conditional Discharge

(a) Adjudication of Wardship. An appeal may be taken to the Appellate Court from an adjudication of wardship in the event that an order of disposition has not been entered within 90 days of the adjudication of wardship.

(b) Revocation of Probation or Conditional Discharge. An appeal may be taken to the Appellate Court from an order revoking probation or conditional discharge in the event that an order of disposition has not been entered within 90 days from the revocation of probation or conditional discharge.

(c) Procedure. The notice of appeal in appeals under this rule shall be filed within 30 days after the expiration of the 90 days specified in this rule and not thereafter.

Adopted September 8, 1975, effective October 1, 1975.

Committee Comments

(October 1, 1975)

In juvenile court proceedings, there is a two-step procedure. First a hearing is held to adjudicate the subject juvenile a ward of the court; then there is a separate hearing resulting in a disposition. If the dispositional hearing and order follow closely the adjudicatory hearing and order, judicial efficiency dictates that an appeal should be taken after disposition. If there is a long delay in disposing of the case, however, Rule 662 provides that an appeal may be taken from the first order. The period set is 90 days to account for normal delay caused by administrative problems. After that period, if the dispositional hearing has not been held, the juvenile may appeal. In such a case he must file his notice of appeal within 30 days of the expiration of the period, and not after. Thus the 6 months' period for application for leave to appeal provided in Rule 605(c) has no application.

For similar reasons, the same provisions are applied to appeals from orders revoking probation or conditional discharge in juvenile cases.

Rule 663. Adoption-Appointment of a Guardian With Power to Consent

(a) An appeal may be taken to the Appellate Court from an order of the court empowering the guardian of the person of a minor to consent to the adoption of such a minor.

(b) The caption on an appeal taken from an order of the court empowering the guardian of the person of a minor to consent to the adoption of such a minor shall not include the name of the minor. Rather, the minor shall be identified by first name and last initial or by initials only. The preferred method is by first name and last initial. The alternative method of initials only is to be used when, due to an unusual first name or spelling, the preferred method would create a substantial risk of revealing the minor's identity.

Adopted September 8, 1975, effective October 1, 1975; amended October 1, 2001, effective immediately.

Committee Comments

Rule 663, added in 1975, makes an order empowering a guardian of the person of a minor to consent to the minor's adoption appealable. See Rule 307(a)(6).

Paragraph (b) was added effective October 1, 2001, to help protect the identities of minors. The amendment requires that their first name and last initial, or their initials only, appear in the caption.

Rules 664-700. Reserved

Article VII. Rules on Admission and Discipline of Attorneys

Part A. Admission to the Bar

Rule 701. General Qualifications

(a) Subject to the requirements contained in these rules, persons may be admitted or conditionally admitted to practice law in this State by the Supreme Court if they are at least 21 years of age, of good moral character and general fitness to practice law, and have satisfactorily completed examinations on academic qualification and professional responsibility as prescribed by the Board of Admissions to the Bar or have been licensed to practice law in another jurisdiction and have met the requirements of Rule 705.

(b) Any person so admitted to practice law in this State is privileged to practice in every court in Illinois. No court shall by rule or by practice abridge or deny this privilege by requiring the retaining of local counsel or the maintaining of a local office for the service of notices.

Amended effective October 2, 1972; amended April 8, 1980, effective May 15, 1980; amended June 12, 1992, effective July 1, 1992; amended March 1, 2001. The amendment to paragraph (b) shall be effective one year after its adoption, and shall apply in capital cases filed by information or indictment on or after its effective date; amended October 2, 2006, effective July 1, 2007; amended Feb. 6, 2013, eff. immediately.

Rule 702. Board of Admissions to the Bar

(a) The Board of Admissions to the Bar shall oversee the administration of all aspects of bar admissions in this State including the character and fitness process. The Board shall consist of seven members of the bar, appointed by the Supreme Court to serve staggered terms of three years. Each member shall serve until his or her successor is duly appointed and qualified. No member may be appointed to more than three full consecutive terms. In addition, the Supreme Court shall appoint a dean of a law school located in Illinois as a nonvoting, *ex officio* member of the Board. The law school dean *ex officio* member shall serve a single term of three years.

(b) A majority of the Board shall constitute a quorum. A president and vice-president shall be designated by the Supreme Court and may serve only one three-year term. A secretary and treasurer shall be annually elected by the members of the board. One member may hold the office of both secretary and treasurer.

(c) The Board shall appoint, with the approval of the Supreme Court, a Director of Administration to serve as the Board's principal executive officer. The Director of Administration, with the Board's approval, may hire sufficient staff as necessary to assist the Board in fulfilling its responsibilities.

(d) The Board shall audit annually the accounts of its treasurer and shall report to the Court at each November term a detailed statement of its finances, together with such recommendations as shall seem advisable. All fees paid to the Board in excess of its expenses shall be applied as the Court may from time to time direct.

Amended June 12, 1992, effective July 1, 1992; amended December 30, 1993, effective January 1, 1994; amended Dec. 5, 2012, eff. Jan. 1, 2013; amended March 23, 2015, eff. July 1, 2015; amended Nov. 18, 2016, eff. immediately; amended Sept. 14, 2018, eff. immediately.

Rule 703. Educational Requirements

Every applicant seeking admission to the bar on examination shall meet the following educational requirements:

(a) Preliminary and College Work. Each applicant shall have graduated from a four-year high school or other preparatory school whose graduates are admitted on diploma to the freshman class of any college or university having admission requirements equivalent to those of the University of Illinois, or shall have become otherwise eligible for admission to such freshman class; and shall have satisfactorily completed at least 90 semester hours of acceptable college work, while in actual attendance at one or more colleges or universities approved by the Board of

Admissions to the Bar. In lieu of such preliminary or college work, the board may, after due investigation, accept the satisfactory completion of the program or curriculum of a particular college or university. Proof of preliminary education may be made either by diploma showing graduation or by certificate that the applicant has become eligible for admission to such college or university, signed by the registrar thereof. Proof of the satisfactory completion of college work may be made by certificate, signed by the registrar of the college or university, that the applicant has satisfactorily completed the required college work. In lieu of the diploma and certificates described herein, the board may accept, as proof of the preliminary and college work required herein, a certificate from an approved law school that the law school has on file proof of such preliminary and college work.

(b) Legal Education. After the completion of both the preliminary and college work above set forth in paragraph (a) of this rule, each applicant shall have pursued a course of law studies and fulfilled the requirements for and received a first degree in law from a law school approved by the American Bar Association. Each applicant shall make proof that he has completed such law study and received a degree, in such manner as the Board of Admissions to the Bar shall require.

Amended September 28, 1977, effective October 15, 1977; amended September 14, 1984, effective September 14, 1984; amended June 12, 1992, effective July 1, 1992.

Rule 704. Qualification on Examination

(a) Every applicant for the Illinois bar examination shall file with the Board of Admissions to the Bar both a character and fitness registration application and a separate application to take the bar examination. The applications shall be in such form as the Board shall prescribe and shall be subject to the fees and filing deadlines set forth in Rule 706.

(b) In the event the character and fitness registration application and the separate application to take the bar examination shall be satisfactory to the Board, the applicant shall be admitted to the examination; provided, however, that the following applicants must first receive certification of good moral character and general fitness to practice law by the Committee on Character and Fitness pursuant to Rule 708 before they will be permitted to write the bar examination: (1) applicants who have been convicted of felonies; (2) applicants against whom are pending indictments, criminal informations, or criminal complaints charging felonies; (3) applicants who have been rejected, or as to whom hearings are pending, in another jurisdiction on a ground related to character and fitness; or (4) applicants admitted to practice in another jurisdiction who have been reprimanded, censured, disciplined, suspended or disbarred in such other jurisdiction or against whom are pending disciplinary charges or proceedings in that jurisdiction.

(c) The Board of Admissions to the Bar shall conduct separate examinations on academic qualification and professional responsibility. At least two academic qualification examinations shall be conducted annually, one in February and the other in July, or at such other times as the Board, in its discretion, may determine. At least three professional responsibility examinations shall be conducted annually, one in March, another in August, and another in November, or at such other times as the Board, in its discretion, may determine. The Board may designate the Multistate

Professional Responsibility Examination of the National Conference of Bar Examiners as the Illinois professional responsibility examination. The Board may determine the score that constitutes a passing grade.

(d) The academic qualification examination shall be conducted under the supervision of the Board. The Illinois bar examination shall be the Uniform Bar Examination (UBE) prepared by the National Conference of Bar Examiners.

(e) In the event the Board of Admissions to the Bar shall find that an applicant has achieved a passing score, as determined by the Board, on the academic and professional responsibility examinations, meets the requirements of these rules, and has received from the Committee on Character and Fitness its certification of good moral character and general fitness to practice law, the Board shall certify to the Court that these requirements have been met; the Board may also transmit to the Court any additional information or recommendation it deems appropriate.

(f) For all persons taking the bar examination after the effective date of this rule, a passing score on the Illinois bar examination is valid for four years from the last date of the examination. An applicant for admission on examination who is not admitted to practice within four years must repeat and pass the examination after filing the requisite character and fitness registration and bar examination applications and paying the fees therefor in accordance with Rule 706.

Amended effective October 2, 1972; amended April 8, 1980, effective May 15, 1980; amended June 19, 1987, effective immediately; amended June 12, 1992, effective July 1, 1992; amended May 7, 1993, effective immediately; amended July 1, 1998, effective immediately; amended July 6, 2000, effective immediately; amended December 6, 2001; effective immediately; amended October 2, 2006, effective July 1, 2007; amended June 8, 2018, eff. Mar. 1, 2019.

Rule 704A. Admission by Transferred Uniform Bar Examination Score

An applicant who has taken the Uniform Bar Examination in a jurisdiction other than Illinois and earned or exceeded the scaled total score deemed passing by the Board may be admitted to the practice of law in this state on the following conditions:

(a) The scaled total score was achieved by taking all portions of the Uniform Bar Examination in the same jurisdiction and in the same exam administration and was attained within the four years immediately preceding the date the application for admission in this state is properly submitted.

(b) The applicant meets the educational requirements of Rule 703.

(c) In the event the Board of Admissions to the Bar shall find that an applicant has achieved a passing Uniform Bar Examination score as determined by the Board through transfer from another jurisdiction, a required minimum score on professional responsibility examinations as required, meets the requirements of these rules, and has received from the Committee on Character and Fitness its certification of good moral character and general fitness to practice law, the Board shall certify to the Court that these requirements have been met; the Board may also transmit to the Court any additional information or recommendation it deems appropriate.

(d) The applicant is in good disciplinary standing before the highest court of every jurisdiction in which ever admitted.

(e) A person applying for admission under this Rule shall not be eligible for admission prior to November 7, 2019.

(f) For all persons transferring a Uniform Bar Examination score, the transferred score is valid for four years from date of the properly submitted application for admission with a transferred Uniform Bar Examination score. An applicant for admission under this Rule who is not admitted to practice in Illinois within four years of that date must either: i) repeat and pass the Illinois bar examination after filing the requisite character and fitness and bar examination applications, and paying the fees therefor, in accordance with Rule 706, or ii) submit a transferred Uniform Bar Examination score attained after the expiration of the previously submitted score.

Adopted June 8, 2018, eff. Jan. 1, 2019.

Rule 705. Admission on Motion

Any person who, as determined by the Board of Admissions to the Bar, has been licensed to practice in the highest court of law in any United States state, territory, or the District of Columbia for no fewer than three years may be eligible for admission on motion on the following conditions:

(a) The applicant meets the educational requirements of Rule 703.

(b) The applicant meets Illinois character and fitness requirements and has been certified by the Committee on Character and Fitness.

(c) The applicant licensed to practice law for fewer than 15 years has passed the Multistate Professional Responsibility Examination in Illinois or in any jurisdiction in which it was administered.

(d) The applicant is in good disciplinary standing before the highest court of every jurisdiction in which ever admitted and is at the time of application on active status in at least one such jurisdiction. For purposes of this rule, the term "jurisdiction" shall mean any United States state, territory, or the District of Columbia.

(e) The applicant provides documentary evidence satisfactory to the Board that for at least three of the five years immediately preceding the application, he or she was engaged in the active, continuous, and lawful practice of law.

(f) The applicant has paid the fee for admission on motion in accordance with Rule 706.

(g) For purposes of this rule, the term “practice of law” shall mean:

(1) Practice as a sole practitioner or for a law firm, professional corporation, legal services office, legal clinic, or other entity the lawful business of which consists of the practice of law or the provision of legal services;

(2) Employment in a state or local court of record in a United States state, territory, or the District of Columbia as a judge, magistrate, referee or similar official, or as a judicial law clerk;

(3) Employment in a federal court of record in a United States state, territory, or the District of Columbia as a judge, magistrate, referee or similar official, or as a judicial law clerk;

(4) Employment as a lawyer for a corporation, agency, association, trust department, or other similar entity;

(5) Practice as a lawyer for a state or local government;

(6) Practice as a lawyer for the federal government, including legal service in the armed forces of the United States;

(7) Employment as a law professor at a law school approved by the American Bar Association; or

(8) Any combination of the above;

provided in each instance, however, that such employment is available only to licensed attorneys and that the primary duty of the position is to provide legal advice, representation, and/or services.

(h) For purposes of this rule, the term "active and continuous" shall mean the person devoted a minimum of 80 hours per month and no fewer than 1,000 hours per year to the practice of law during 36 of the 60 months immediately preceding the application.

(i) Except as provided in this paragraph (i) and paragraph (j) that follows, for purposes of this rule, the term "lawful" shall mean the practice was performed physically without Illinois and either physically within a jurisdiction in which the applicant was licensed or physically within a jurisdiction in which a lawyer not admitted to the bar is permitted to engage in such practice. An applicant relying on practice performed physically in a jurisdiction in which he or she is not admitted to the bar must establish that such practice is permitted by statute, rule, court order, or by written confirmation from the admitting or disciplinary authority of the jurisdiction in which the practice occurred. Practice falling within subparagraph (g)(3) or (g)(6) above shall be considered lawful practice even if performed physically without a jurisdiction in which the applicant is admitted. Practice falling within subparagraph (g)(7) above shall be considered lawful practice even if performed physically without a jurisdiction in which the applicant is admitted, provided that the professor does not appear in court or supervise student court appearances as part of a clinical course or otherwise. If an applicant who temporarily engaged in practice performed physically outside of the jurisdiction where the applicant was licensed demonstrates, to the satisfaction of the Board, that such practice was devoted primarily to matters governed under the law of the jurisdiction where the applicant was licensed, for the benefit of clients or entities physically located within the jurisdiction where the applicant was licensed, such practice shall be considered lawful practice for a period not to exceed two months.

(j) Practice performed within Illinois pursuant to a Rule 716 license may be deemed lawful and counted toward eligibility for admission on motion, provided all other requirements of Rule 705 are met.

(k) Practice performed without Illinois and within the issuing jurisdiction pursuant to a limited or temporary license may be counted toward eligibility for admission on motion only if the limited or temporary license authorized practice without supervision in the highest court of law in the issuing jurisdiction.

(l) A person who has failed an Illinois bar examination administered within the preceding five years is not eligible for admission on motion.

(m) Admission on motion is not a right. The burden is on the applicant to establish to the satisfaction of the Board that he or she meets each of the foregoing requirements.

Adopted April 3, 1989, effective immediately; amended October 25, 1989, effective immediately; amended June 12, 1992, effective July 1, 1992; amended December 6, 2001, effective immediately; amended September 30, 2002, effective immediately; amended February 6, 2004, effective immediately; amended October 1, 2010, effective January 1, 2011; amended Nov. 26, 2013, effective immediately; amended Oct. 15, 2015, eff. Jan. 1, 2016; amended Sept. 30, 2020, eff. Oct. 1, 2020.

Rule 706. Filing Deadlines and Fees of Registrants and Applicants

(a) Character and Fitness Registration. Character and fitness registration applications filed with applications to take the bar examination shall be accompanied by a registration fee of $450.

(b) Applications to Take the Bar Examination. The fees and deadlines for filing applications to take the February bar examination are as follows:

(1) $500 for applications submitted on or before the regular filing deadline of September 15 preceding the examination;

(2) $700 for applications submitted after September 15 but on or before the late filing deadline of November 1; and

(3) $1000 for applications submitted after November 1 but on or before the final late filing deadline of December 15.

The fees and deadlines for filing applications to take the July bar examination are as follows:

(1) $500 for applications submitted on or before the regular filing deadline of February 15 preceding the examination;

(2) $700 for applications submitted after February 15 but on or before the late filing deadline of April 1; and

(3) $1000 for applications submitted after April 1 but on or before the final late filing deadline of May 15.

(c) Applications for Reexamination. The fees and deadlines for filing applications for reexamination at a February bar examination are as follows:

(1) $500 for applications submitted on or before the regular reexamination filing deadline of November 1;

(2) $850 for applications submitted after November 1 but on or before the final late filing deadline of December 15.

The fees and deadlines for filing applications for reexamination at a July bar examination are as follows:

(1) $500 for applications submitted on or before the regular reexamination filing deadline of May 1;

(2) $850 for applications submitted after May 1 but on or before the final late filing deadline of May 15.

(d) Late Applications. The Board of Admissions to the Bar shall not consider requests for late filing of applications after the final bar examination filing deadlines set forth in the preceding subparagraphs (b) and (c).

(e) Applications for Admission on Motion under Rule 705. Each applicant for admission to the bar on motion under Rule 705 shall pay a fee of $1250.

(f) Applications for Admission by Transferred Uniform Bar Examination Score Under Rule 704A. Each applicant for admission to the bar by transferred UBE score under Rule 704A shall pay a fee of $1250.

(g) Application for Limited Admission as House Counsel. Each applicant for limited admission to the bar as house counsel under Rule 716 shall pay a fee of $1250.

(h) Application for Limited Admission as a Lawyer for Legal Service Programs. Each applicant for limited admission to the bar as a lawyer for legal service programs under Rule 717 shall pay a fee of $100.

(i) Recertification Fee. Each applicant for Character and Fitness recertification shall pay a fee of $450.

(j) Payment of Fees. All fees are nonrefundable and shall be paid in advance by credit or debit card, certified check, cashier's check or money order payable to the Board of Admissions to the Bar. Fees of an applicant who does not appear for an examination shall not be transferred to a succeeding examination.

(k) Fees to be Held by Treasurer. All fees paid to the Board of Admissions to the Bar shall be held by the Board treasurer, subject to the order of the Court.

Amended January 30, 1975, effective March 1, 1975; amended October 1, 1982, effective October 1, 1982; amended June 12, 1992, effective July 1, 1992; amended July 1, 1998, effective immediately; amended July 6, 2000, effective August 1, 2000; amended December 6, 2001, effective immediately; amended February 11, 2004, effective July 1, 2004; amended October 1, 2010, effective January 1, 2011; amended January 10, 2012, effective immediately; amended Nov. 26, 2013, effective Jan. 1, 2014; amended February 10, 2014, effective immediately; amended May 26, 2016, effective July 1, 2016; amended June 22, 2017, eff. July 1, 2017; amended June 8, 2018, eff. Jan. 1, 2019.

Rule 707. Permission for an Out-of-State Attorney to Provide Legal Services in Proceedings in Illinois

(a) Permission to Provide Legal Services in a Proceeding in Illinois. Upon filing pursuant to this rule of a verified Statement by an eligible out-of-state attorney and the filing of an appearance of an active status Illinois attorney associated with the attorney in the proceeding, the out-of-state attorney is permitted to appear as counsel and provide legal services in the proceeding without order of the tribunal. The permission is subject to termination pursuant to this rule.

(b) Eligible Out-of-State Attorney. An out-of-state attorney is eligible for permission to

appear under this rule if the attorney:

(1) is admitted to practice law without limitation and is authorized to practice law in another state, territory, or commonwealth of the United States, in the District of Columbia, or in a foreign country and is not prohibited from practice in any jurisdiction or any other jurisdiction by reason of discipline, resignation with charges pending, or permanent retirement;

(2) on or after January 1, 2014, has not entered an appearance in more than five other proceedings under the provisions of this rule in the calendar year in which the Statement is filed;

(3) has not been enjoined or otherwise prohibited from obtaining permission under this rule; and

(4) has not been admitted to the practice of law in Illinois by unlimited or conditional admission. The admission of an attorney as a house counsel pursuant to Rule 716, as a legal services program lawyer pursuant to Rule 717, or as a foreign legal counsel pursuant to Rules 712 and 713 does not preclude that attorney from obtaining permission to provide legal services under this rule.

(c) Proceedings Requiring Permission. The following proceedings require permission under this rule:

(1) a case before a court of the State of Illinois;

(2) a court-annexed alternative dispute resolution proceeding; and

(3) a case before an agency or administrative tribunal of the State of Illinois or of a unit of local government in Illinois, if the representation by the out-of-state attorney constitutes the practice of law in Illinois or the agency or tribunal requires that a representative be an attorney.

The appeal or review of a proceeding before a different tribunal is a separate proceeding for purposes of this rule.

(d) Statement. The out-of-state attorney shall include the following information in the Statement and shall serve the Statement upon the Administrator of the Attorney Registration and Disciplinary Commission, the Illinois counsel with whom the attorney is associated in the proceeding, the attorney's client, and all parties to the proceeding entitled to notice:

(1) the attorney's full name, all addresses of offices from which the attorney practices law and related e-mail addresses and telephone numbers;

(2) the name of the party or parties that the attorney represents in the proceeding;

(3) a listing of all proceedings in which the attorney has filed an appearance pursuant to this rule in the calendar year in which the Statement is filed and the ARDC registration number of the attorney, if assigned previously;

(4) a listing of all jurisdictions in which the attorney has been admitted and the full name under which the attorney has been admitted and the license or bar number in each such jurisdiction, together with a letter or certificate of good standing from each such jurisdiction, except for federal courts and agencies of the United States;

(5) a statement describing any office or other presence of the attorney for the practice of

law in Illinois;

(6) a statement that the attorney submits to the disciplinary authority of the Supreme Court of Illinois;

(7) a statement that the attorney has undertaken to become familiar with and to comply, as if admitted to practice in Illinois, with the rules of the Supreme Court of Illinois, including the Illinois Rules of Professional Conduct and the Supreme Court Rules on Admission and Discipline of Attorneys, and other Illinois law and practices that pertain to the proceeding;

(8) the full name, business address and ARDC number of the Illinois attorney with whom the attorney has associated in the matter; and

(9) a certificate of service of the Statement upon all entitled to service under this rule.

(e) Additional Disclosures. The out-of-state attorney shall advise the Administrator of new or additional information related to items 4, 5 and 8 of the Statement, shall report a criminal conviction or discipline as required by Supreme Court Rule 761 and Rule 8.3(d) of the Illinois Rules of Professional Conduct, respectively, and shall report the conclusion of the attorney's practice in the proceeding. The attorney shall submit these disclosures in writing to the Administrator within 30 days of when the information becomes known to the attorney. The out-of-state attorney shall provide waivers upon request of the Administrator to authorize bar admission or disciplinary authorities to disclose information to the Administrator.

(f) Fee per Proceeding. At the time of serving the Statement upon the Administrator, the out-of-state attorney shall submit to the Administrator a nonrefundable fee in the amount of $250 per proceeding, except that no fee shall be due from an attorney appointed to represent an indigent defendant in a criminal or civil case, from an attorney employed by or associated with a nonprofit legal service organization in a civil case involving the client of such a program, from an attorney providing legal services pursuant to Rule 718, or from an attorney employed by the United States Department of Justice and representing the United States. Fees shall be deposited in the disciplinary fund maintained pursuant to Rule 751(e)(6). The Attorney Registration and Disciplinary Commission shall retain $75 of each fee received under this section to fund its expenses to administer this rule. The $175 balance of each such fee shall be remitted to a trust fund established by the Attorney Registration and Disciplinary Commission for the Court's Access to Justice Commission and used at the Court's discretion to provide funding for the work of the Commission on Access to Justice and related Court programs that improve access to justice for low-income and disadvantaged Illinois residents, as well as to provide funding to the Lawyers Trust Fund of Illinois for distribution to legal aid organizations serving the State. The Court or its designee may direct the deposit of other funds into the trust fund. The Attorney Registration and Disciplinary Commission shall act in a ministerial capacity only and shall have no interest in or discretion concerning the trust fund. The Attorney Registration and Disciplinary Commission shall make payments from the trust fund pursuant to written direction from the Court or its designee. Such directions may be submitted electronically.

(g) Administrator's Review of Statement. The Administrator of the Attorney Registration and Disciplinary Commission shall conduct an inquiry into the Statement. It shall be the duty of

the out-of-state attorney and Illinois attorneys to respond expeditiously to requests for information from the Administrator related to an inquiry under this section.

(h) Registration Requirement. An out-of-state attorney who appears in a proceeding pursuant to this rule shall register with the Attorney Registration and Disciplinary Commission and pay the registration fee required by Rule 756 for each year in which the attorney has any appearance of record pursuant to this rule. The attorney shall register within 30 days of the filing of a Statement pursuant to this rule if the attorney is not yet registered.

(i) Duration of Permission to Practice. The permission to practice law shall extend throughout the out-of-state attorney's practice in the proceeding unless earlier terminated.

(1) The Supreme Court, the Chief Judge of the Circuit Court for the circuit in which a proceeding is pending, or the court in which a proceeding is pending may terminate the permission to practice upon its own motion or upon motion of the Administrator if it determines that grounds exist for termination. Grounds may include, but are not limited to:

(i) the failure of the out-of-state attorney to have or maintain qualifications required under this rule;

(ii) the conduct of the attorney inconsistent with Rule 5.5 or other rules of the Illinois Rules of Professional Conduct, the Supreme Court Rules on Admission and Discipline of Attorneys or other rules of the Supreme Court, or other Illinois law and practices that pertain to the proceeding;

(iii) the conduct of the attorney in the proceeding;

(iv) the absence of an Illinois attorney who is associated with the out-of-state lawyer as counsel, who has an appearance of record in the proceeding, and who participates actively in the proceeding pursuant to Rule 5.5(c)(1) of the Illinois Rules of Professional Conduct;

(v) inaccuracies or omissions in the Statement;

(vi) the failure of the attorney or the associated Illinois lawyer to comply with requests of the Administrator for information; or

(vii) the failure of the attorney to pay the per-proceeding fee under this rule or to comply with registration requirements under Rule 756.

(2) If the proceeding is not before the Supreme Court and the Administrator files with the Court a motion to terminate the attorney's permission to practice, the Administrator shall serve the motion upon the attorney in any manner in which service of process is authorized by Rule 765(a).

(j) Disciplinary Authority. The out-of-state attorney shall be subject to the disciplinary and unauthorized practice of law authority of the Supreme Court. The Administrator may institute disciplinary or unauthorized practice of law investigations and proceedings related to the out-of-state attorney. The Administrator may seek interim relief in the Supreme Court pursuant to the procedure set forth in Rule 774. The Administrator may also refer matters to the disciplinary authority of any other jurisdiction in which the attorney may be licensed.

Amended June 12, 1992, effective July 1, 1992; amended October 2, 2006, effective July 1, 2007; amended June 18, 2013, eff. July 1, 2013; amended May 29, 2014, eff. July 1, 2014; amended June 22, 2017, eff. July 1, 2017; amended Dec. 28, 2017, eff. Feb. 1, 2018.

Rule 708. Committee on Character and Fitness

(a) At the November term in each year, the Supreme Court shall appoint a Committee on Character and Fitness in each of the judicial districts of this state, comprised of Illinois lawyers. In the First Judicial District the committee shall consist of no fewer than 30 members of the bar, and in the Second, Third, Fourth and Fifth Judicial Districts, each committee shall consist of no fewer than 15 members of the bar. Unless the Court specifies a shorter term, all members shall be appointed for staggered three-year terms and shall serve until their successors are duly appointed and qualified. No member may be appointed to more than three full consecutive terms. Vacancies for any cause shall be filled by appointment of the Court for the unexpired term. The Court shall appoint a chairperson and a vice-chairperson for each committee. The chairperson may serve only one three-year term. The members of the Board of Admissions to the Bar shall be *ex-officio* members of the committees and are authorized to serve as members of hearing panels of any committee.

(b) Pursuant to the Rules of Procedure for the Board of Admissions to the Bar and the Committees on Character and Fitness, the Committee shall determine whether each applicant presently possesses good moral character and general fitness for admission to the practice of law. An applicant may be so recommended if the committee determines that his or her record of conduct demonstrates that he or she meets the essential eligibility requirements for the practice of law and justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them. A record manifesting a failure to meet the essential eligibility requirements, including a deficiency in the honesty, trustworthiness, diligence, or reliability of an applicant, may constitute a basis for denial of admission.

(c) The essential eligibility requirements for the practice of law include the following: (1) the ability to learn, to recall what has been learned, to reason, and to analyze; (2) the ability to communicate clearly and logically with clients, attorneys, courts, and others; (3) the ability to exercise good judgment in conducting one's professional business; (4) the ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations; (5) the ability to conduct oneself with respect for and in accordance with the law and the Illinois Rules of Professional Conduct; (6) the ability to avoid acts that exhibit disregard for the health, safety, and welfare of others; (7) the ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, creditors, and others; (8) the ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others; (9) the ability to comply with deadlines and time constraints; and (10) the ability to conduct oneself properly and in a manner that engenders respect for the law and the profession.

(d) If required by the Committee or its Rules of Procedure, each applicant shall appear before the committee of his or her district or some member thereof and shall furnish the committee such

evidence of his or her good moral character and general fitness to practice law as in the opinion of the committee would justify his or her admission to the bar.

(e) At all times prior to his or her admission to the bar of this state, each applicant is under a continuing duty to supplement and continue to report fully and completely to the Board of Admissions to the Bar and to the Committee on Character and Fitness all information required to be disclosed pursuant to any and all application documents and such further inquiries prescribed by the Board and the Committee.

(f) If the Committee is of the opinion that the applicant is of good moral character and general fitness to practice law, it shall so certify to the Board of Admissions to the Bar, and the Board shall transmit such certification to the Court together with any additional information or recommendation the Board deems appropriate when all other admission requirements have been met. If the Committee is not of that opinion, it shall file with the Board of Admissions to the Bar a statement that it cannot so certify, together with a report of its findings and conclusions.

(g) Character and Fitness certification is valid for nine months from the date of certification. An applicant who has been so certified and who has not been admitted to practice within nine months must be recertified after filing the requisite character and fitness registration and paying the fee therefor in accordance with Rule 706.

(h) An applicant who has availed himself or herself of his or her full hearing rights before the Committee on Character and Fitness and who deems himself or herself aggrieved by the determination of the committee may, on notice to the committee by service upon the Director of Administration for the Board of Admissions in Springfield, petition the Supreme Court for review within 35 days after service of the Committee's decision upon the applicant, and, unless extended for good cause shown, the Committee shall have 28 days to respond. The director shall file the record of the hearing with the Supreme Court at the time that the response of the Committee is filed.

Amended effective November 15, 1971, and October 2, 1972; amended April 10, 1987, effective August 1, 1987; amended June 12, 1992, effective July 1, 1992; amended April 4, 1995, effective immediately; amended November 22, 2000, effective December 1, 2000; amended December 6, 2001, effective immediately; amended October 2, 2006, effective July 1, 2007; amended Nov. 26, 2013, effective Jan. 1, 2014.

Rule 709. Power to Make Rules, Conduct Investigations, and Subpoena Witnesses

(a) Subject to the approval of the Supreme Court, the Board of Admissions to the Bar and the Committee on Character and Fitness shall have power to make, adopt, and alter rules not inconsistent with this rule, for the proper performance of their respective functions.

(b) The Board of Admissions to the Bar and the Committee on Character and Fitness for each judicial district are hereby respectively constituted bodies of commissioners of this court, who are hereby empowered and charged to receive and entertain complaints, to make inquiries and investigations, and to take proof from time to time as may be necessary, concerning applications for admission to the bar, examinations given by or under the supervision of the Board of

Admissions to the Bar, and the good moral character and general fitness to practice law of applicants for admission. They may call to their assistance in such inquiries other members of the bar and make all necessary rules and regulations concerning the conduct of such inquiries and investigations, and take the testimony of witnesses. The hearings before the commissioners shall be private unless any applicant concerned shall request that they be public. Upon application by the commissioners, the clerk of the Supreme Court shall issue subpoenas *ad testificandum*, subpoenas *duces tecum*, or *dedimus potestatem* to take depositions. Witnesses shall be sworn by a commissioner or any person authorized by law to administer oaths. All testimony shall be taken under oath, transcribed, and transmitted to the court, if requested. The commissioners shall report to the Supreme Court the failure or refusal of any person to attend and testify in response to a subpoena.

Amended effective November 15, 1971, and October 2, 1972; amended May 28, 1982, effective July 1, 1982; amended June 12, 1992, effective July 1, 1992; amended December 6, 2001, effective immediately; amended Nov. 26, 2013, effective Jan. 1, 2014.

Rule 710. Immunity

Any person who communicates information concerning an applicant for admission to the Illinois bar to any member of the Illinois Board of Admissions to the Bar or to any member of the Character and Fitness Committees or to the Director of Administration, administrators, staff, investigators, agents, or attorneys of the Board or such Committees shall be immune from all civil liability which, except for this rule, might result from such communication. The grant of immunity provided by this rule shall apply only to those communications made by such persons to any member of the Illinois Board of Admissions to the Bar or to any member of the Character and Fitness Committees or to the Director of Administration, administrators, staff, investigators, agents, or attorneys of the Board or such Committees.

Adopted April 4, 1995, effective immediately; amended Nov. 26, 2013, effective Jan. 1, 2014.

Rule 711. Representation by Supervised Law Students or Graduates

(a) Eligibility. A student in a law school approved by the American Bar Association may be certified by the dean of the school to be eligible to perform the services described in paragraph (c) of this rule, if the student satisfies the following requirements:

(1) The student must have received credit for work representing at least one-half of the total hourly credits required for graduation from the law school.

(2) The student must be in good academic standing and be eligible under the school's criteria to undertake the activities authorized herein.

A graduate of a law school approved by the American Bar Association who (i) has not yet had an opportunity to take the examinations provided for in Rule 704, (ii) has taken the examinations provided for in Rule 704 but not yet received notification of the results of either examination, or

(iii) has taken and passed both examinations provided for in Rule 704 but has not yet been sworn as a member of the Illinois bar may, if the dean of that law school has no objection, be authorized by the Administrative Director of the Illinois Courts to perform the services described in paragraph (c) of this rule.

For purposes of this rule, a law school graduate is defined as any individual not yet licensed to practice law in any jurisdiction.

(b) Agencies Through Which Services Must Be Performed. The services authorized by this rule may only be carried on in the course of the student's or graduate's work with one or more of the following organizations or programs:

(1) a legal aid bureau, legal assistance program, organization, or clinic chartered by the State of Illinois or approved by a law school approved by the American Bar Association;

(2) the office of the public defender; or

(3) a law office of the State or any of its subdivisions.

(c) Services Permitted. Under the supervision of a member of the bar of this State, and with the written consent of the person on whose behalf the law student or graduate is acting, an eligible law student or graduate may render the following services:

(1) Counsel and advise clients, negotiate in the settlement of claims, represent clients in mediation and other nonlitigation matters, and engage in the preparation and drafting of legal instruments.

(2) Appear in the trial courts, courts of review and administrative tribunals of this State, including court-annexed arbitration and mediation, subject to the following qualifications:

(i) Written consent to representation of the person on whose behalf the law student or graduate is acting shall be filed in the case and brought to the attention of the judge or presiding officer.

(ii) Appearances, pleadings, motions, and other documents to be filed with the court may be prepared by the student or graduate and may be signed by him/her with the accompanying designation "Law Student" or "Law Graduate" but must also be signed by the supervising member of the bar.

(iii) In criminal cases, in which the penalty may be imprisonment, in proceedings challenging sentences of imprisonment, and in civil or criminal contempt proceedings, the student or graduate may participate in pretrial, trial, and posttrial proceedings as an assistant of the supervising member of the bar, who shall be present and responsible for the conduct of the proceedings.

(iv) In all other civil and criminal cases in the trial courts or administrative tribunals, the student or graduate may conduct all pretrial, trial, and posttrial proceedings, and the supervising member of the bar need not be present.

(v) In matters before courts of review, the law student or graduate may prepare briefs, excerpts from the record, and other documents filed in courts of review of the State, which may set forth the name of the student or graduate with the accompanying designation "Law

Student" or "Law Graduate" but must be filed in the name of the supervising member of the bar. Upon motion by the supervising member of the bar, the law student or law graduate may request authorization to argue the matter before the court of review. If the law student or law graduate is permitted to argue, the supervising member of the bar must be present and responsible for the conduct of the hearing.

(d) Compensation. A student or graduate rendering services authorized by this rule shall not request or accept any compensation from the person for whom the student or graduate renders the services, but may receive compensation from an agency described in paragraph (b).

(e) Law Student Certification and Authorization.

(1) Upon request of a student or the appropriate organization, the dean of the law school in which the student is in attendance may, if the dean finds that the student meets the requirements stated in paragraph (a) of this rule, file with the Administrative Director a certificate so stating. Upon the filing of the certificate and until it is withdrawn or terminated the student is eligible to render the services described in paragraph (c) of this rule. The Administrative Director shall authorize, upon review and approval of the completed application of an eligible student as defined in paragraph (a) and the certification as described in paragraph (e), the issuance of the temporary license. No services that are permitted under paragraph (c) shall be performed prior to the issuance of a temporary license.

(2) Unless otherwise provided by the Administrative Director for good cause shown, or unless sooner withdrawn or terminated, the certificate shall remain in effect until the expiration of 24 months after it is filed, or until the announcement of the results of the first bar examination following the student's graduation, whichever is earlier. The certificate of a student who passes that examination shall continue in effect until the student is admitted to the bar.

(3) The certificate may be withdrawn by the dean at any time, without prior notice, hearing, or showing of cause, by the mailing of a notice to that effect to the Administrative Director and copies of the notice to the student and to the agencies to which the student had been assigned.

(4) The certificate may be terminated by this court at any time without prior notice, hearing, or showing of cause. Notice of the termination may be filed with the Administrative Director, who shall notify the student and the agencies to which the student had been assigned.

(f) Application by Law Graduate. A law school graduate who wishes to be authorized to perform services described in paragraph (c) of this rule shall apply directly to the Administrative Director, with a copy to the dean of the law school from which he/she graduated.

Amended effective May 27, 1969; amended July 1, 1985, effective August 1, 1985; amended July 3, 1986, effective August 1, 1986; amended June 19, 1989, effective August 1, 1989; amended June 12, 1992, effective July 1, 1992; amended October 10, 2001, effective immediately; amended December 5, 2003, effective immediately; amended February 10, 2006, effective immediately; amended June 18, 2013, eff. July 1, 2013; amended June 8, 2016, eff. immediately; amended June 22, 2017, eff. July 1,

2017.

Committee Comments
(June 18, 2013)

This rule was amended effective July 1, 2013, to clarify that students and law graduates may perform nonlitigation legal services under this rule. Nothing in this rule should be construed to require law students or law graduates to be certified under this rule for work, including but not limited to transactional, pretrial, and policy work, that properly may be performed by a law student or other nonlawyer under Rule 5.3 of the Illinois Rules of Professional Conduct.

Committee Comments
(July 1, 1985)

This rule was amended, effective August 1, 1985, to allow the Administrative Director of the Illinois Courts to allow certain graduates of approved law schools to perform services under this rule pending their first opportunity to sit for the bar examination and to allow the Administrative Director, upon good cause shown, to extend the termination date of a certificate beyond the period prescribed by the rule. "Good cause shown" would ordinarily be limited to evidence that the licensee was unable to sit for the first bar examination offered following his graduation because of illness, a death in his family, military obligation, etc.

Rule 712. Licensing of Foreign Legal Consultants Without Examination.

(a) General Regulation. In its discretion the supreme court may license to practice as a foreign legal consultant on foreign and international law, without examination, an applicant who:

(1) has been admitted to practice (or has obtained the equivalent of such admission) in a foreign country, and has engaged in the practice of law of such country, and has been in good standing as an attorney or counselor at law (or the equivalent of either) in such country, for a period of not less than five of the seven years immediately preceding the date of his or her application, provided that admission as a notary or its equivalent in any foreign country shall not be deemed to be the equivalent of admission as an attorney or counselor at law;

(2) possesses the good moral character and general fitness requisite for a member of the bar of this state;

(3) possesses the requisite documentation evidencing compliance with the immigration laws of the United States; and

(4) intends to practice as a legal consultant in the State of Illinois and to maintain an office therefor in the State of Illinois.

(b) Reciprocity. In considering whether to license an applicant under this rule, the supreme court may in its discretion take into account whether a member of the bar of the supreme court would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission (as referred to in paragraphs (c)(1) and

(c)(5) of this rule), if there is pending with the supreme court a request to take this factor into account from a member of the bar of this court actively seeking to establish such an office in that country which raises a serious question as to the adequacy of the opportunity for such a member to establish such an office, or if the supreme court decides to do so on its own initiative.

(c) Proof Required. An applicant to be licensed under this rule must file with the supreme court or its designee:

(1) a certificate from the authority in such foreign country having final jurisdiction over professional discipline, certifying as to the applicant's admission to practice and the date thereof and as to his or her good standing as such attorney or counselor at law or the equivalent, together with a duly authenticated English translation of such certificate if it is not in English;

(2) a letter of recommendation from one of the members of the executive body of such authority, or from one of the judges of the highest law court or court of original jurisdiction of such foreign country, together with a duly authenticated English translation of such letter if it is not in English;

(3) evidence of his or her citizenship, educational and professional qualifications, period of actual practice in such foreign country and age;

(4) the affidavits of reputable persons as evidence of the applicant's good moral character and general fitness, substantially as required by Rule 708;

(5) a summary of the laws and customs of such foreign country that relate to the opportunity afforded to members of the bar of the supreme court to establish offices for the giving of legal advice to clients in such foreign country; and

(6) a completed character and fitness registration application in the form prescribed by the Board of Admissions to the Bar and such other evidence of character, qualification and fitness as the supreme court may from time to time require and compliance with the requirements of this subsection.

(d) Waiver. Upon a showing that strict compliance with the provisions of paragraph (c)(1) or (c)(2) of this rule would cause the applicant unnecessary hardship, the supreme court may in its discretion waive or vary the application of such provisions and permit the applicant to furnish other evidence in lieu thereof.

(e) Right to Practice and Limitations on Scope of Practice. A person licensed as a foreign legal consultant under this rule may render legal services and give professional advice within this state only on the law of the foreign country where the foreign legal consultant is admitted to practice. A foreign legal consultant in giving such advice shall not quote from or summarize advice concerning the law of this state (or of any other jurisdiction) which has been rendered by an attorney at law duly licensed under the law of the State of Illinois (or of any other jurisdiction, domestic or foreign). A licensed foreign legal consultant shall not:

(1) appear for other persons or entities as attorney in any court, or before any judicial officer, or before any administrative agency, in this state (other than upon admission in isolated cases pursuant to Rule 707) or prepare pleadings or any other documents or issue subpoenas in any action or proceeding brought in any such court or before any such judicial officer, or

before any such administrative agency;

(2) prepare any deed, mortgage, assignment, discharge, lease or any other instrument affecting real estate located in the United States of America;

(3) prepare any will, codicil or trust instrument affecting the disposition after death of any property located in the United States of America and owned by a citizen thereof;

(4) prepare any instrument relating to the administration of decedent's estate in the United States of America;

(5) prepare any instrument or other document which relates to the marital relations, rights or duties of a resident of the United States of America or the custody or care of the children of such a resident;

(6) render professional legal advice with respect to a personal injury occurring within the United States;

(7) render professional legal advice with respect to United States immigration laws, United States customs laws or United States trade laws;

(8) render professional legal advice on or under the law of the State of Illinois or of the United States or of any state, territory or possession thereof or of the District of Columbia or of any other jurisdiction (domestic or foreign) in which such person is not authorized to practice law (whether rendered incident to the preparation of legal instruments or otherwise);

(9) directly, or through a representative, propose, recommend or solicit employment of himself or herself, his or her partner, or his or her associate for pecuniary gain or other benefit with respect to any matter not within the scope of practice authorized by this rule;

(10) use any title other than "foreign legal consultant" and affirmatively state in conjunction therewith the name of the foreign country in which he or she is admitted to practice (although he or she may additionally identify the name of the foreign or domestic firm with which he or she is associated); or

(11) in any way hold himself or herself out as an attorney licensed in Illinois or as an attorney licensed in any United States jurisdiction.

(f) Disciplinary Provisions. Every person licensed to practice as a foreign legal consultant under this rule shall execute and file with the Illinois Attorney Registration and Disciplinary Commission, in such form and manner as the supreme court may prescribe:

(1) the foreign legal consultant's written commitment to observe the Rules of Professional Conduct, as adopted by the Illinois Supreme Court and as it may be amended from time to time, to the extent applicable to the legal services authorized by subparagraph (e) of this rule;

(2) a duly acknowledged instrument, in writing, setting forth the foreign legal consultant's address in this state and designating the clerk of the supreme court as the foreign legal consultant's agent upon whom process may be served, with like effect as if served personally upon the foreign legal consultant, in any action or proceeding thereafter brought against the foreign legal consultant and arising out of or based upon any legal services rendered or offered to be rendered by the foreign legal consultant within or to residents of this state, whenever after

due diligence service cannot be made upon the foreign legal consultant at such address or at such new address in this state as he or she shall have filed in the office of the clerk of the supreme court by means of a duly acknowledged supplemental instrument in writing; and

(3) appropriate evidence of professional liability insurance or other proof of financial responsibility, in such form and amount as the supreme court may prescribe, to assure his or her proper professional conduct and responsibility.

(g) Service of Process. Service of process on the clerk of the supreme court, pursuant to the designation filed as required by Rule 712(f)(2) above, shall be made by personally delivering to and leaving with such clerk, or with a deputy or assistant authorized by the foreign legal consultant to receive such service, at his or her office, duplicate copies of such process together with a fee of $10. Service of process shall be complete when such clerk has been so served. Such clerk shall promptly send one of such copies to the foreign legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to such foreign legal consultant at his or her address specified by the foreign legal consultant as aforesaid.

(h) Separate Authority. This rule shall not be deemed to limit or otherwise affect the provisions of Rule 704.

(i) Unauthorized Practice of Law. Any person who is licensed under the provisions of this rule shall not be deemed to have a license to perform legal services prohibited by Rule 712(e) hereof. Any person licensed hereunder who violates the provisions of Rule 712(e) is engaged in the unauthorized practice of law and may be held in contempt of the court. Such person may also be subject to disciplinary proceedings pursuant to Rule 777 and the penalties imposed by section 32-5 of the Criminal Code of 1961, as amended, and section 1 of the Attorney Act (705 ILCS 205/1).

Adopted December 7, 1990, effective immediately; amended December 6, 2001, effective immediately; amended May 30, 2008, effective immediately; amended June 22, 2017, eff. July 1, 2017.

Rule 713. Applications for Licensing of Foreign Legal Consultants

(a) Referral to Committee on Character and Fitness.

(1) The Committee on Character and Fitness of the judicial district in which any applicant for a license (pursuant to Rule 712) to practice as a foreign legal consultant resides shall pass upon his or her good moral character and general fitness to practice as a foreign legal consultant. The applicant shall furnish the committee with copies of the affidavits referred to in paragraphs (b)(3), (b)(4) and (b)(5) hereof. Each applicant for a license to practice as a foreign legal consultant shall appear before the committee of his district or some member thereof and shall furnish the committee such evidence of his or her good moral character and general fitness to practice as a foreign legal consultant as in the opinion of the committee would justify his or her being licensed as a foreign legal consultant.

(2) Unless otherwise ordered by the supreme court, no license to practice as a foreign legal consultant shall be granted without a certificate, from the Committee on Character and Fitness

for the judicial district in which the applicant resides, certifying that the committee has found that the applicant is of good moral character and general fitness to practice as a foreign legal consultant.

(b) Documents—Affidavits and Other Proof Required. Every applicant for a license to practice as a foreign legal consultant shall file the following additional documents with his or her application:

(1) a certificate from the authority having final jurisdiction over professional discipline in the foreign country in which the applicant was admitted to practice, which shall be signed by a responsible official or one of the members of the executive body of such authority and shall be attested under the hand and seal, if any, of the clerk of such authority, and which shall certify:

(i) as to the authority's jurisdiction in such matters;

(ii) as to the applicant's admission to practice in such foreign country and the date thereof and as to his or her good standing as an attorney or counselor at law or the equivalent therein; and

(iii)as to whether any charge or complaint has ever been filed against the applicant with such authority, and, if so, the substance of each such charge or complaint and the disposition thereof;

(2) a letter of recommendation from one of the members of the executive body of such authority or from one of the judges of the highest law court or court of general original jurisdiction of such foreign country, certifying to the applicant's professional qualifications, together with a certificate under the hand and seal, if any, of the clerk of such authority or of such court, as the case may be, attesting to the office held by the person signing the letter and the genuineness of his signature;

(3) affidavits as to the applicant's good moral character and general fitness to practice as a foreign legal consultant from three reputable persons residing in this state and not related to the applicant, two or whom shall be practicing Illinois attorneys;

(4) affidavits from two attorneys or counselors at law or the equivalent admitted in and practicing in such foreign country, stating the nature and extent of their acquaintance with the applicant and their personal knowledge as to the nature, character and extent of the applicant's practice, and as to the applicant's good standing as an attorney or counselor at law or the equivalent in such foreign country, and the duration and continuity of such practice;

(5) the National Conference of Bar Examiners questionnaire and affidavit;

(6) documentation in duly authenticated form evidencing that the applicant is lawfully entitled to reside and be employed in the United States of America pursuant to the immigration laws thereof;

(7) such additional evidence as the applicant may see fit to submit with respect to his or her educational and professional qualifications and his or her good moral character and general fitness to practice as a foreign legal consultant;

(8) a duly authenticated English translation of every document submitted by the applicant which is not in English; and

(9) a duly acknowledged instrument designating the clerk of the supreme court the applicant's agent for service of process as provided in Rule 712(f)(2).

(c) University and Law School Certificates. A certificate shall be submitted from each university and law school attended by the applicant, setting forth the information required by forms which shall be provided to the applicant for that purpose.

(d) Exceptional Situations. In the event that the applicant is unable to comply strictly with any of the foregoing requirements, the applicant shall set forth the reasons for such inability in an affidavit, together with a statement showing in detail the efforts made to fulfill such requirements.

(e) Authority of Committee on Character and Fitness to Require Additional Proof. The Committee on Character and Fitness may in any case require the applicant to submit such additional proof or information as it may deem appropriate.

(f) Filing. Every application for a license as a foreign legal consultant, together with all the documents submitted thereon, shall upon its final disposition be filed in the office of the clerk of the supreme court.

(g) Fees of Applicants. Each applicant for a license to practice as a foreign legal consultant on foreign or international law shall pay in advance a fee of $800. All fees shall be paid to the treasurer of the Board of Admissions to the Bar to be held by the treasurer subject to the order of the court.

(h) Undertaking. Prior to taking custody of any money, securities (other than unindorsed securities in registered form), negotiable instruments, bullion, precious stones or other valuables, in the course of his or her practice as a foreign legal consultant, for or on behalf of any client domiciled or residing in the United States, every person licensed to practice as a foreign legal consultant shall obtain, and shall maintain in effect for the duration of such custody, an undertaking issued by a duly authorized surety company, and approved by a justice of the supreme court, to assure the faithful and fair discharge of his or her duties and obligations arising from such custody. The undertaking shall be in an amount not less than the amount of any such money, or the fair market value of any such property other than money, of which the foreign legal consultant shall have custody, except that the supreme court may in any case in its discretion for good cause direct that such undertaking shall be in a greater or lesser amount. The undertaking or a duplicate original thereof shall be promptly filed by the foreign legal consultant with the clerk of the supreme court.

Adopted December 7, 1990, effective immediately; amended June 12, 1992, effective July 1, 1992; amended December 6, 2001, effective immediately; amended June 22, 2017, eff. July 1, 2017.

Rule 714. Reserved

Rule 715. Admission of Graduates of Foreign Law Schools

Any person who has received his or her legal education and law degree in a foreign country

may make application to the Board of Admissions to the Bar for admission to the bar upon academic qualification examination upon the following conditions:

(a) The applicant has been licensed to practice law in the foreign country in which the law degree was conferred and/or in the highest court of law in any state or territory of the United States or the District of Columbia and is in good standing as an attorney or counselor at law (or the equivalent of either) in that country or other jurisdiction where admitted to practice.

(b) The applicant has been actively and continuously engaged in the practice of law under such license or licenses for at least five of the seven years immediately prior to making application.

(c) The Board has determined that the quality of the applicant's preliminary, college and legal education is acceptable for admission to the bar of this state based upon its review and consideration of any matters deemed relevant by the Board including, but not limited to, the jurisprudence of the country in which the applicant received his or her education and training, the curriculum of the law schools attended and the course of studies pursued by the applicant, accreditation of the law schools attended by the applicant by competent accrediting authorities in the foreign country where situated, post-graduate studies and degrees earned by the applicant in the foreign country and in the United States, and the applicant's success on bar examinations in other jurisdictions in this country. Each applicant shall submit such proofs and documentation as the Board may require.

(d) The applicant has achieved a passing score as determined by the Board on the full academic qualification examination.

(e) The applicant has achieved a passing score as determined by the Board on the Multistate Professional Responsibility Examination in Illinois or in any other jurisdiction in which it was administered.

(f) The applicant meets the character and fitness standards in Illinois and has been so certified to the Board by the Committee on Character and Fitness pursuant to Rule 708.

(g) The applicant has filed the requisite character and fitness registration and bar examination applications and has paid the fees therefor in accordance with Rule 706.

Adopted October 4, 2002, effective January 1, 2003.

Rule 716. Limited Admission Of House Counsel

A person who, as determined by the Board of Admissions to the Bar, has been licensed to practice in the highest court of law in any United States state, territory, the District of Columbia, or a foreign jurisdiction, or is otherwise authorized to practice in a foreign jurisdiction, may receive a limited license to practice law in this state when the lawyer is employed in Illinois as house counsel exclusively for a single corporation, partnership, association or other legal entity (as well as any parent, subsidiary or affiliate thereof), the lawful business of which consists of activities other than the practice of law or the provision of legal services upon the following conditions:

(a) The applicant meets the educational requirements of Rule 703 or Rule 715(c) if a foreign lawyer;

(b) The applicant meets Illinois character and fitness requirements and has been certified by the Committee on Character and Fitness;

(c) The applicant licensed to practice law for fewer than 15 years has passed the Multistate Professional Responsibility Exam in Illinois or in any jurisdiction in which it was administered, or, in the case of a lawyer who has been admitted or otherwise authorized to practice only in a foreign jurisdiction, has completed the course on ethics for foreign lawyers approved by the Illinois Supreme Court Commission on Professionalism;

(d) The applicant is in good disciplinary standing before the highest court of every jurisdiction in which ever admitted and is at the time of application on active status in at least one such jurisdiction, or, in the case of a lawyer who has been admitted or otherwise authorized to practice only in a foreign jurisdiction, is not disbarred, suspended, or otherwise prohibited from practice in any jurisdiction by reason of discipline, resignation with charges pending, or permanent retirement;

(e) The applicant has paid the fee for limited admission of house counsel under Rule 706.

(f) Application requirements. To apply for the limited license, the applicant must file with the Board of Admissions to the Bar the following:

(1) A completed application for the limited license in the form prescribed by the Board;

(2) A duly authorized and executed certification by applicant's employer that:

(A) The employer is not engaged in the practice of law or the rendering of legal services, whether for a fee or otherwise;

(B) The employer is duly qualified to do business under the laws of its organization and the laws of Illinois;

(C) The applicant works exclusively as an employee of said employer for the purpose of providing legal services to the employer at the date of his or her application for licensure; and

(D) The employer will promptly notify the Clerk of the Supreme Court of the termination of the applicant's employment.

(3) Such other affidavits, proofs and documents as may be prescribed by the Board.

(g) Authority and Limitations. A lawyer licensed and employed as provided by this Rule has the authority to act on behalf of his or her employer for all purposes as if licensed in Illinois. A lawyer licensed under this rule shall not offer legal services or advice to the public or in any manner hold himself or herself out to be engaged or authorized to engage in the practice of law, except such lawyer, other than a lawyer licensed under this rule only on the basis of being admitted or authorized to practice in a foreign jurisdiction, may provide voluntary *pro bono* public services as defined in Rule 756(f).

(h) Duration and Termination of License. The license and authorization to perform legal services under this rule shall terminate upon the earliest of the following events:

(1) The lawyer is admitted to the general practice of law under any other rule of this Court.

(2) The lawyer ceases to be employed as house counsel for the employer listed on his or

her initial application for licensure under this rule; provided, however, that if such lawyer, within 120 days of ceasing to be so employed, becomes employed by another employer and such employment meets all requirements of this Rule, his or her license shall remain in effect, if within said 120-day period there is filed with the Clerk of the Supreme Court: (A) written notification by the lawyer stating the date on which the prior employment terminated, identification of the new employer and the date on which the new employment commenced; (B) certification by the former employer that the termination of the employment was not based upon the lawyers character and fitness or failure to comply with this rule; and (C) the certification specified in subparagraph (f)(2) of this rule duly executed by the new employer. If the employment of the lawyer shall cease with no subsequent employment within 120 days thereafter, the lawyer shall promptly notify the Clerk of the Supreme Court in writing of the date of termination of the employment, and shall not be authorized to represent any single corporation, partnership, association or other legal entity (or any parent, subsidiary or affiliate thereof).

(3) The lawyer is suspended or disbarred from practice in any jurisdiction or any court or agency before which the lawyer is admitted.

(4) The lawyer fails to maintain active status in at least one jurisdiction, or, in the case of a lawyer who has been admitted or otherwise authorized to practice only in a foreign jurisdiction, has been disbarred, suspended, or otherwise prohibited from practice in any jurisdiction by reason of discipline, resignation with charges pending, or permanent retirement.

(i) Annual Registration and MCLE. Beginning with the year in which a limited license to practice law under this rule is granted and continuing for each subsequent year in which house counsel continues to practice law in Illinois under the limited license, house counsel must register with the Attorney Registration and Disciplinary Commission and pay the fee for active lawyers set forth in Rule 756 and fully comply with all MCLE requirements for active lawyers set forth in Rule 790 *et seq.*

(j) Discipline. A lawyer licensed under this rule shall be subject to the jurisdiction of the Court for disciplinary purposes to the same extent as all other lawyers licensed to practice law in this state.

(k) Credit toward Admission on Motion. The period of time a lawyer practices law while licensed under this rule may be counted toward eligibility for admission on motion, provided all other requirements of Rule 705 are met.

(l) Newly Employed House Counsel. A lawyer who is newly employed as house counsel in Illinois shall not be deemed to have engaged in the unauthorized practice of law in Illinois prior to licensure under this rule if application for the license is made within 90 days of the commencement of such employment.

Adopted February 11, 2004, effective July 1, 2004; amended March 26, 2008, effective July 1, 2008; amended October 1, 2010, effective January 1, 2011; amended December 9, 2011, effective July 1, 2012; amended Apr. 8, 2013, effective immediately; amended Nov. 26, 2013, effective immediately; amended Oct. 15, 2015, eff. Jan. 1, 2016.

Rule 717. Limited Admission of Legal Service Program Lawyers

(a) Eligibility. A lawyer admitted to the practice of law in another state or the District of Columbia who meets the educational requirements of Rule 703 may receive a limited license to practice law in this state when the lawyer is employed in Illinois for an organized legal service, public defender or law school clinical program providing legal assistance to indigent persons.

(b) Application Requirements. To qualify for the license the applicant must file with the Board of Admissions to the Bar the following:

(1) A completed application for the limited license and a completed character and fitness registration application in the form prescribed by the Board.

(2) A certificate of good standing from the highest court of each jurisdiction of admission.

(3) A certificate from the disciplinary authority of each jurisdiction of admission which:

(a) states that the applicant has not been suspended, disbarred or disciplined and that no charges of professional misconduct are pending; or

(b) identifies any suspensions, disbarments, or disciplinary sanctions and any pending charges.

(4) A duly authorized and executed certification by the applicant's employer that:

(a) it is engaged in the practice of law for the rendering of legal services to indigent persons;

(b) it is duly qualified to do business under the laws of its organization and the laws of Illinois;

(c) the applicant will work exclusively as an employee of said employer, noting the date employment is expected to commence; and

(d) it will promptly notify the Clerk of the Supreme Court of the termination of the applicant's employment.

(5) Such other affidavits, proofs and documentation as may be prescribed by the Board.

(6) The requisite fees in accordance with Rule 706.

(c) Character and Fitness Approval. Each applicant for a limited license under this rule must receive certification of good moral character and general fitness to practice law by the Committee on Character and Fitness in accordance with the provisions of Rule 708.

(d) Certification by the Board. In the event the Board of Admissions to the Bar shall find that the applicant meets the requirements of this rule and has received from the Committee on Character and Fitness its certification of good moral character and general fitness to practice law, the Board shall certify to the Court that such applicant is qualified for licensure.

(e) Limitation of Practice. A lawyer while in the employ of an employer described in subparagraph (a) of this rule may perform legal services in this state solely on behalf of such employer and the indigent clients represented by such employer. In criminal cases classified as felonies, the lawyer may participate in the proceedings as an assistant of a supervising member of

the bar who shall be present and responsible for the conduct of the proceedings.

(f) Duration and Termination of License. The license and authorization to perform legal services under this rule shall terminate upon the earliest of the following events:

(1) Eighteen months after admission to practice under this rule.

(2) The lawyer is admitted to the general practice of law under any other rule of this Court.

(3) The lawyer ceases to be employed for the employer listed on his or her initial application for licensure under this rule.

(4) Withdrawal of an employer's certification filed pursuant to subparagraph (b)(4) of this rule. An employer may withdraw certification at any time without cause being stated.

(g) Annual Registration. Once the Court has conferred a limited license to perform legal services under this rule, the lawyer must register with the Attorney Registration and Disciplinary Commission and pay the fee for active lawyers set forth in Rule 756 for the year in which the license is conferred and for any subsequent year into which the limited license extends.

(h) Discipline. All lawyers licensed under this rule shall be subject to the jurisdiction of the Court for disciplinary purposes to the same extent as all other lawyers licensed to practice law in this state.

(i) No Credit Toward Admission on Motion. The period of time a lawyer practices law while licensed under this rule shall not be counted toward his or her eligibility for admission on motion under Rule 705.

Adopted February 11, 2004, effective July 1, 2004.

Rule 718. Provision of Legal Services Following Determination of Major Disaster

(a) Determination of existence of major disaster. Solely for purposes of this rule, this Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred.

(b) Temporary practice in this jurisdiction following major disaster. Following the determination of an emergency affecting the justice system in this jurisdiction pursuant to paragraph (a) of this rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in this jurisdiction are in need of pro bono services and the assistance of lawyers from outside of this jurisdiction is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction by reason of discipline, resignation with charges pending, permanent retirement, or disability inactive status, may provide legal services in this jurisdiction on a temporary basis. Such legal services must be provided on a *pro bono* basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and supervised through an established not-for-profit bar association, *pro bono* program or legal services program or through such organization(s) specifically designated by this Court.

(c) Temporary practice in this jurisdiction following major disaster in another jurisdiction. Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction by reason of discipline, resignation with charges pending, permanent retirement, or disability inactive status, may provide legal services in this jurisdiction on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

(d) Duration of authority for temporary practice. The authority to practice law in this jurisdiction granted by paragraph (b) of this rule shall end when this Court determines that the conditions caused by the major disaster in this jurisdiction have ended except that a lawyer then representing clients in this jurisdiction pursuant to paragraph (b) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients. The authority to practice law in this jurisdiction granted by paragraph (c) of this rule shall end 60 days after this Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended. If the attorney determines to cease providing legal services pursuant to this rule before the expiration of the duration of authority under this paragraph, the attorney shall so notify the Administrator of the Attorney Registration and Disciplinary Commission (ARDC) within 30 days of the cessation of those services.

(e) Legal services in proceedings in Illinois. The authority granted by this rule permits the provision of legal services in proceedings within Illinois only as follows:

(1) by permission under Rule 707; or

(2) if this Court, in any determination made under paragraph (a), grants blanket permission to provide legal services in all or designated proceedings in this jurisdiction to lawyers providing legal services pursuant to paragraph (b).

(f) Disciplinary authority and registration requirement. Lawyers providing legal services in this jurisdiction pursuant to paragraphs (b) or (c) are subject to this Court's disciplinary authority and the Rules of Professional Conduct of this jurisdiction as provided in Rule 8.5 of the Rules of Professional Conduct. Lawyers providing legal services in this jurisdiction under paragraphs (b) or (c) shall, within 30 days from the commencement of the provision of legal services, submit a statement to the Administrator of the ARDC pursuant to paragraph (h) below, unless all of the lawyer's legal services authorized under this rule are also permitted under Rule 707, in which case the attorney need only register annually with the ARDC. Any lawyer who provides legal services pursuant to this rule shall not be considered to be engaged in the unlawful practice of law in this jurisdiction.

(g) Notification to clients. Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this rule shall inform clients in this jurisdiction of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in this jurisdiction except as permitted by this rule.

They shall not state or imply to any person that they are otherwise authorized to practice law in this jurisdiction.

(h) Statement of Attorney. The statement of the attorney shall include:

(1) the attorney's full name and the attorney's addresses, e-mail addresses, and telephone numbers at which the attorney may be reached for business purposes arising from legal services provided pursuant to this rule;

(2) the names of any law firms or other places of business from which the attorney was practicing law at the time of the declaration of the mass disaster and the business addresses and business e-mail addresses and telephone numbers for each such entity;

(3) the names of the United States jurisdictions in which the attorney has been admitted to practice law and the identification number assigned to the attorney by each such jurisdiction. For purposes of the statement, the attorney need only submit information about the jurisdiction upon which the attorney relies for eligibility under this rule and any other and all other admissions in any state of the United States or the District of Columbia;

(4) if the attorney is eligible to provide legal services pursuant to paragraph (b), the name, address, telephone number, and e-mail address of the organization that will assign and supervise the attorney's provision of legal services pursuant to paragraph (b) of this rule; and

(5) if the attorney is eligible to provide legal services pursuant to paragraph (c), a copy of the determination of the mass disaster in that jurisdiction.

The attorney shall provide the ARDC with updated information within 30 days of any change in the information required in the statement of the attorney. Statements and updates required by this rule may be submitted electronically.

(i) Administrator's Review of Statement. Upon receipt of a statement of an attorney or upon receipt or notice of other information bearing on the attorney's eligibility under this rule, the Administrator shall conduct an inquiry to determine the attorney's eligibility for permission to provide legal services under this rule. It shall be the duty of the attorney to respond expeditiously to requests for information from the Administrator related to an inquiry under this section. If the Administrator determines that the attorney is no longer eligible to provide services under this rule, the Administrator shall terminate the permission of the attorney to provide those legal services. The decison to terminate permission is subject to review by the Court upon motion of the attorney. The termination of permission shall not be a bar to disciplinary proceedings arising from the facts upon which the termination is based.

Adopted April 4, 2012, eff. immediately; amended June 18, 2013, eff. July 1, 2013; amended Sept. 27, 2017, eff. Nov. 1, 2017.

Committee Comments

(April 4, 2012)

[1] A major disaster in this or another jurisdiction may cause an emergency affecting the justice

system with respect to the provision of legal services for a sustained period of time interfering with the ability of lawyers admitted and practicing in the affected jurisdiction to continue to represent clients until the disaster has ended. When this happens, lawyers from the affected jurisdiction may need to provide legal services to their clients, on a temporary basis, from an office outside their home jurisdiction. In addition, lawyers in an unaffected jurisdiction may be willing to serve residents of the affected jurisdiction who have unmet legal needs as a result of the disaster or, though independent of the disaster, whose legal needs temporarily are unmet because of disruption to the practices of local lawyers. Lawyers from unaffected jurisdictions may offer to provide these legal services either by traveling to the affected jurisdiction or from their own offices or both, provided the legal services are provided on a *pro bono* basis through an authorized not-for-profit entity or such other organization(s) specifically designated by this Court. A major disaster includes, for example, a hurricane, earthquake, flood, wildfire, tornado, public health emergency or an event caused by terrorists or acts of war.

[2] Under paragraph (a), this Court shall determine whether a major disaster causing an emergency affecting the justice system has occurred in this jurisdiction, or in a part of this jurisdiction, for purposes of triggering paragraph (b) of this rule. This Court may, for example, determine that the entirety of this jurisdiction has suffered a disruption in the provision of legal services or that only certain areas have suffered such an event. The authority granted by paragraph (b) shall extend only to lawyers authorized to practice law and not disbarred, suspended from practice or otherwise restricted from practice in any other manner in any other jurisdiction.

[3] Paragraph (b) permits lawyers authorized to practice law in an unaffected jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide *pro bono* legal services to residents of the affected jurisdiction following determination of an emergency caused by a major disaster; notwithstanding that they are not otherwise authorized to practice law in the affected jurisdiction. Other restrictions on a lawyer's license to practice law that would prohibit that lawyer from providing legal services pursuant to this rule include, but are not limited to, probation, inactive status, disability inactive status or a nondisciplinary administrative suspension for failure to complete continuing legal education or other requirements. Lawyers on probation may be subject to monitoring and specific limitations on their practices. Lawyers on inactive status, despite being characterized in many jurisdictions as being "in good standing," and lawyers on disability inactive status are not permitted to practice law. Public protection warrants exclusion of these lawyers from the authority to provide legal services as defined in this rule. Lawyers permitted to provide legal services pursuant to this rule must do so without fee or other compensation, or expectation thereof. Their service must be provided through an established not-for-profit organization that is authorized to provide legal services either in its own name or that provides representation of clients through employed or cooperating lawyers. Alternatively, this court may instead designate other specific organization(s) through which these legal services may be rendered. Under paragraph (b), an *emeritus* lawyer from another United States jurisdiction may provide *pro bono* legal services on a temporary basis in this jurisdiction provided that the *emeritus* lawyer is authorized to provide *pro bono* legal services in that jurisdiction pursuant to that jurisdiction's *emeritus* or *pro bono* practice rule. Lawyers may

also be authorized to provide legal services in this jurisdiction on a temporary basis under Rule 5.5(c) of the Illinois Rules of Professional Conduct.

[4] Lawyers authorized to practice law in another jurisdiction, who principally practice in the area of such other jurisdiction determined by this Court to have suffered a major disaster, and whose practices are disrupted by a major disaster there, and who are not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, are authorized under paragraph (c) to provide legal services on a temporary basis in this jurisdiction. Those legal services must arise out of and be reasonably related to the lawyer's practice of law in the affected jurisdiction. For purposes of this rule, the determination of a major disaster in another jurisdiction should first be made by the highest court of appellate jurisdiction in that jurisdiction. For the meaning of "arise out of and reasonably related to," see Rule 5.5 Comment [14] of the Illinois Rules of Professional Conduct.

[5] Emergency conditions created by major disasters end, and when they do, the authority created by paragraphs (b) and (c) also ends with appropriate notice to enable lawyers to plan and to complete pending legal matters. Under paragraph (d), this Court determines when those conditions end only for purposes of this rule. The authority granted under paragraph (b) shall end upon such determination except that lawyers assisting residents of this jurisdiction under paragraph (b) may continue to do so for such longer period as is reasonably necessary to complete the representation. The authority created by paragraph (c) will end 60 days after this Court makes such a determination with regard to an affected jurisdiction.

[6] Paragraphs (b) and (c) do not authorize lawyers to appear in the courts of this jurisdiction. Court appearances are subject to the *pro hac vice* admission rules of the particular court. This Court may, in a determination made under paragraph (e)(2), include authorization for lawyers who provide legal services in this jurisdiction under paragraph (b) to appear in all or designated courts of this jurisdiction without need for such *pro hac vice* admission. If such an authorization is included, any *pro hac vice* admission fees shall be waived. A lawyer who has appeared in the courts of this jurisdiction pursuant to paragraph (e) may continue to appear in any such matter notwithstanding a declaration under paragraph (d) that the conditions created by major disaster have ended. Furthermore, withdrawal from a court appearance is subject to Rule 1.16 of the Illinois Rules of Professional Conduct.

[7] Authorization to practice law as a foreign legal consultant or in-house counsel in a United States jurisdiction offers lawyers a limited scope of permitted practice and may therefore restrict that person's ability to provide legal services under this rule.

Rule 719. Admission of Military Spouse Attorneys From Other Jurisdictions

(a) Eligibility. A lawyer admitted to the practice of law in another state or the District of Columbia who meets the educational requirements of Rule 703 may receive a license to practice law in this state if the lawyer is:

(1) identified by the Department of Defense (or, for the Coast Guard when it is not operating as a service in the Navy, by the Department of Homeland Security) as the spouse of a service member of the United States Uniformed Services; and/or is a party to a civil union

with a service member pursuant to the Illinois Religious Freedom Protection and Civil Union Act; and

(2) is residing—or intends, within the next six months, to be residing—in Illinois due to the service member's military orders for a permanent change of station to the State of Illinois.

(b) Application Requirements. To qualify for the license the applicant must file with the Board of Admissions to the Bar the following:

(1) a completed application for license and a completed character and fitness registration application in the form prescribed by the Board;

(2) a certificate of good standing from the highest court of each jurisdiction of admission;

(3) a certificate from the disciplinary authority of each jurisdiction of admission which:

(a) states that the applicant has not been suspended, disbarred or disciplined and that no charges of professional misconduct are pending; or

(b) identifies any suspensions, disbarments, or disciplinary sanctions and any pending charges;

(4) a copy of the service member's military orders reflecting a permanent change of station to a military installation in Illinois; and

(5) such other affidavits, proofs and documentation as may be prescribed by the Board.

(c) Fee Waiver. The requisite fees in accordance with Rule 706 will be waived for all lawyers complying with the requirements of Rule 719.

(d) Character and Fitness Approval. Each applicant for a license under this rule must receive certification of good moral character and general fitness to practice law by the Committee on Character and Fitness in accordance with the provisions of Rule 708.

(e) Certification by the Board. In the event the Board of Admissions to the Bar shall find that the applicant meets the requirements of this rule and has received from the Committee on Character and Fitness its certification of good moral character and general fitness to practice law, the Board shall certify to the Court that such applicant is qualified for licensure.

(f) Duration and Termination of License. The license and authorization to perform legal services under this rule shall be limited by the earliest of the following events:

(1) the service member is no longer a member of the United States Uniformed Services;

(2) the military spouse attorney is no longer married to the service member;

(3) a change in the service member's military orders reflecting a permanent change of station to a military installation other than Illinois, except that if the service member has been assigned to an unaccompanied or remote assignment with no dependants authorized, the military spouse attorney may continue to practice pursuant to the provisions of this rule until the service member is assigned to a location with dependants authorized; or

(4) the lawyer is admitted to the general practice of law under any other rule of this Court.

In the event that any of the events listed in subparagraph (f)(1)-(3) occur, the attorney licensed under this rule shall notify the clerk of the Supreme Court of the event in writing within one year

of the date upon which the event occurs and upon such notification, the license and authorization to perform services under this rule shall be terminated.

(g) Annual Registration. Once the Court has conferred a license to perform legal services under this rule, the lawyer must register with the Attorney Registration and Disciplinary Commission and pay the fee for active lawyers set forth in Rule 756 for the year in which the license is conferred and for any subsequent year into which the license extends.

(h) Discipline. All lawyers licensed under this rule shall be subject to the jurisdiction of the Court for disciplinary purposes to the same extent as all other lawyers licensed to practice law in this state.

(i) Credit Toward Admission on Motion. The period of time a lawyer practices law while licensed under this rule shall be counted toward his or her eligibility for admission on motion under Rule 705.

Adopted June 18, 2013, eff. July 1, 2013.

Rule 720. Reserved

Rule 721. Professional Service Corporations, Professional Associations, Limited Liability Companies, and Registered Limited Liability Partnerships for the Practice of Law

(a) Professional service corporations formed under the Professional Service Corporation Act (805 ILCS 10/1 *et seq.*), professional associations organized under the Professional Association Act (805 ILCS 305/0.01 *et seq.*), limited liability companies organized under the Limited Liability Company Act (805 ILCS 180/1-1 *et seq.*), or registered limited liability partnerships organized under the Uniform Partnership Act (1997) (805 ILCS 206/100 *et seq.*), or professional corporations, professional associations, limited liability companies, or registered limited liability partnerships formed under similar provisions of successor Acts to any of the foregoing legislation or under similar statutes of other states or jurisdictions of the United States, may engage in the practice of law in Illinois provided that

(1) each natural person shall be licensed to practice law who is (A) a shareholder, officer, or director of the corporation (except the secretary of the corporation), member of the association, member (or manager, if any) of the limited liability company, or partner of the registered limited liability partnership, (B) a shareholder, officer, or director of a corporation (except the secretary of the corporation), member of an association, member (or manager, if any) of a limited liability company, or partner of a registered limited liability partnership that itself is a shareholder of a corporation, member of an association, member (or manager, if any) of a limited liability company, or partner of a registered limited liability partnership engaged in the practice of law, or (C) engaged in the practice of law and an employee of any such corporation, association, limited liability company, or registered limited liability partnership; and

(2) one or more persons shall be members of the bar of Illinois, and engaged in the practice

of law in Illinois, who are either (A) shareholders of the corporation, members of the association or limited liability company, or partners of the registered limited liability partnership permitted to engage in the practice of law in Illinois hereunder, or (B) shareholders of a corporation, members of an association or limited liability company, or partners in a registered limited liability partnership permitted to engage in the practice of law in Illinois hereunder that itself is a shareholder of the corporation, member of the association or limited liability company, or partner of the registered limited liability partnership permitted to engage in the practice of law in Illinois hereunder; and

(3) the corporation, association, limited liability company, or registered limited liability partnership shall do nothing which, if done by an individual attorney, would violate the standards of professional conduct applicable to attorneys licensed by this court; and

(4) no natural person shall be permitted to practice law in Illinois who is a shareholder, officer, director of the corporation, member of the association, member (or manager, if any) of the limited liability company, or partner of the registered limited liability partnership, or an employee of the corporation, association, limited liability company, or registered limited liability partnership, unless that person is either a member of the bar in Illinois or specially admitted by court order to practice in Illinois.

(b) This rule does not diminish or change the obligation of each attorney engaged in the practice of law in behalf of the corporation, association, limited liability company, or registered limited liability partnership to conduct himself or herself in accordance with the standards of professional conduct applicable to attorneys licensed by this court. Any attorney who by act or omission causes the corporation, association, limited liability company, or registered limited liability partnership to act in a way which violates standards of professional conduct, including any provision of this rule, is personally responsible for such act or omission and is subject to discipline therefor. Any violation of this rule by the corporation, association, limited liability company, or registered limited liability partnership is a ground for the court to terminate or suspend the right of the corporation, association, limited liability company, or registered limited liability partnership to practice law or otherwise to discipline it.

(c) No corporation, association, limited liability company, or registered limited liability partnership shall engage in the practice of law in Illinois, or open or maintain an establishment for that purpose in Illinois, without a certificate of registration issued by this court.

(d) Unless the corporation, association, limited liability company, or registered limited liability partnership maintains minimum insurance or proof of financial responsibility in accordance with Rule 722, the articles of incorporation or association or organization, or the partnership agreement, shall provide, and in any event the shareholders of the corporation, members of the association or limited liability company, or partners of the registered limited liability partnership shall be deemed to agree by virtue of becoming shareholders, members, or partners, that all shareholders, members, or partners shall be jointly and severally liable for the acts, errors, and omissions of the shareholders, members, or partners, and other employees of the corporation, association, limited liability company, or registered limited liability partnership, arising out of the performance of professional services by the corporation, association, limited liability company, or registered

limited liability partnership while they are shareholders, members, or partners.

(e) An application for registration shall be signed by an authorized shareholder of the corporation, member of the association or limited liability company, or partner of the registered limited liability partnership, and filed with the clerk of this court with a fee of $50. The application shall contain the following:

(1) the name and street address of the corporation, association, limited liability company, or registered limited liability partnership in the State of Illinois;

(2) the statute under which it is formed;

(3) the names and addresses of the shareholders of the corporation, members of the association or limited liability company, or partners of the registered limited liability partnership;

(4) a statement of whether the corporation, association, limited liability company, or registered limited liability partnership is on a calendar or fiscal year basis and if fiscal, the closing date;

(5) a statement that each shareholder, officer, and director of the corporation (except the secretary of the corporation), each member of the association, each member (and each manager, if any) of the limited liability company, or each partner of the registered limited liability partnership is a member of the bar of each jurisdiction in which such person practices law and that no disciplinary action is pending against any of them; and

(6) such other information and documents as the court may from time to time require.

(f) A certificate of registration shall continue in effect until it is suspended or revoked, subject, however, to renewal annually on or before January 31 of each year. The application for renewal shall contain the information itemized in paragraph (e) of this rule and be signed by an authorized shareholder, member, or partner and filed with the clerk of this court with a fee of $40. No certificate is assignable.

(g) Nothing in this rule modifies the attorney-client privilege.

(h) To the extent that the provisions of this rule or Rule 722 are inconsistent with any provisions of the Professional Service Corporation Act, the Professional Association Act, the Limited Liability Company Act, or the Uniform Partnership Act, such provisions of said acts shall have no application.

Effective March 18, 1969; amended October 21, 1969, effective November 15, 1969; amended October 1, 1976, effective November 15, 1976; amended February 19, 1982, effective April 1, 1982; amended October 9, 1984, effective November 1, 1984; amended February 5, 1997, effective March 1, 1997; amended April 1, 2003, effective July 1, 2003; amended May 20, 2008, effective immediately; amended September 30, 2009, effective immediately; amended June 22, 2017, eff. July 1, 2017.

Commentary

(Revised December 5, 2003)

As amended, Rule 721: (i) includes registered limited liability partnerships among the kinds of entities that may engage in the practice of law in Illinois; (ii) facilitates registration and renewal by permitting a single authorized member of such law firms to execute the application for registration or renewal; and (iii) clarifies that a corporation, association, limited liability company, registered limited liability partnership formed under the laws of this state or similar statutes of other states or jurisdictions of the United States can itself be a shareholder of a corporation, member of an association or limited liability company, or partner of a registered limited liability partnership that is registered under the rule.

Rule 722. Limited Liability Legal Practice

(a) For purposes of this rule:

(1) "Limited liability entity" means a corporation, association, limited liability company, or registered limited liability partnership engaged in the practice of law in Illinois pursuant to Rule 721.

(2) "Owner" means a shareholder, member, manager, or partner of a limited liability entity.

(3) "Wrongful conduct" means acts, errors, or omissions in the performance of professional services by any owners or employees of a limited liability entity while they were affiliated with that entity.

(b) The liability, if any, of owners of a limited liability entity, for a claim asserted against the limited liability entity or any of its owners or employees arising out of wrongful conduct, shall be determined by the provisions of the statute under which the limited liability entity is organized if that entity maintains minimum insurance or proof of financial responsibility, as follows:

(1) "Minimum insurance" means a professional liability insurance policy applicable to a limited liability entity, and any of its owners or employees, for wrongful conduct. Such insurance shall exist, in one or more policies, with respect to claims asserted during an annual policy period due to alleged wrongful conduct occurring during the policy period and the previous six years. Such policies shall have a minimum amount of insurance of $100,000 per claim and $250,000 annual aggregate, times the number of lawyers in the firm at the beginning of the annual policy period, provided that the firm's insurance need not exceed $5,000,000 per claim and $10,000,000 annual aggregate. Evidence of any such minimum insurance shall be provided with each application for registration or renewal pursuant to Rule 721 by means of an affidavit or a verification by certification under section 1-109 of the Code of Civil Procedure of an authorized shareholder, member, or partner that his or her firm maintains the minimum insurance required by this rule. For purposes of Rules 721(d) and 722, the minimum amount of insurance required shall not be affected: (A) by any exceptions or exclusions from coverage that are customary with respect to lawyers professional liability insurance policies; (B) if, with respect to a particular claim, the limited liability entity fails to maintain insurance for wrongful conduct occurring before the annual policy period, so long as insurance coverage in the amount specified in this rule exists with respect to the claim in question; or (C) if, during an annual policy period, the per claim or annual aggregate limits are exceeded by the amounts of any claims, judgments, or settlements. If evidence of insurance is provided with a registration or

renewal application pursuant to Rule 721 and it is ultimately determined that the limited liability entity failed to maintain minimum insurance during the period covered by that registration or renewal, unless such failure is fraudulent or wilful the joint and several liability of the owners for a claim arising out of wrongful conduct shall be limited to the minimum per claim amount of insurance applicable to the limited liability entity under this rule.

(2) Owners of a limited liability entity that has obtained minimum insurance shall be jointly and severally liable, up to the amount of the deductible or retention, for any claims arising out of wrongful conduct unless the limited liability entity has also provided proof of financial responsibility in a sum no less than the amount of the deductible or retention.

(3) "Proof of financial responsibility" means funds that are specifically designated and segregated for the satisfaction of any judgments against a limited liability entity, and any of its owners or employees, entered by or registered in any court of competent jurisdiction in Illinois, arising out of wrongful conduct. At the beginning of an annual period covered by a certificate of registration pursuant to Rule 721, such funds shall be in a sum no less than the minimum required annual aggregate for minimum insurance by that limited liability entity, unless the proof of financial responsibility is provided solely to apply to the deductible or retention pertaining to the applicable minimum insurance, in which case the funds shall be no less than the amount of the deductible or retention. During the annual period covered by a certificate of registration pursuant to Rule 721, such funds may be used only to satisfy any judgments against the limited liability entity, and any of its owners or employees, entered by or registered in any court of competent jurisdiction in Illinois, arising out of wrongful conduct. Such funds may be in any of the following forms: (A) deposit in trust or in bank escrow of cash, bank certificates of deposit, or United States Treasury obligations; (B) a bank letter of credit, or (C) a surety bond. Evidence of any such proof of financial responsibility shall be provided with each application for registration or renewal pursuant to Rule 721 by means of an affidavit or a verification by certification under section 1-109 of the Code of Civil Procedure of an authorized shareholder, member, or partner that his or her firm maintains the funds required by this rule. Otherwise minimum proof of financial responsibility remains minimum, for purposes of this rule, if the individual or combined amount of any judgments during the annual period covered by the certificate of registration exceeds the amount of the segregated funds.

(4) If a limited liability entity maintains minimum insurance or proof of financial responsibility at the time that a bankruptcy case is commenced with respect to that entity, it shall be deemed to do so with respect to claims asserted after the commencement of the bankruptcy case.

(c) Nothing in this rule or any law under which a limited liability entity is organized shall relieve any lawyer from personal liability for claims arising out of acts, errors, or omissions in the performance of professional services by the lawyer or any person under the lawyer's direct supervision and control.

Adopted April 1, 2003, effective July 1, 2003; amended March 15, 2004, effective immediately.

Commentary
(April 1, 2003)

Rule 721 imposes joint and several liability on lawyers with an ownership interest in law firms organized under statutes that purport to limit vicarious liability, for claims arising out of the performance of professional services by any firm lawyers or employees, unless the firm maintains minimum insurance or proof of financial responsibility in accordance with Rule 722. For lawyers with an ownership interest in such firms to obtain the limited liability authorized by statute, Rule 722 imposes additional obligations, beyond any statutory requirements, to provide sufficient professional liability insurance or other funds to protect clients with such claims.

Rules 721 and 722 do not reduce lawyers' liability for their own professional conduct or that of persons under their direct supervision and control. Nor do these rules affect lawyers' ethical responsibilities for their own conduct, or that of their law firm or their firm's lawyers or employees, under Rules 5.1, 5.2, or 5.3 of the Rules of Professional Conduct.

Rules 723-29. Reserved

Rule 730. Group Legal Services

No attorney shall participate in a plan which provides group legal services in this State unless the plan has been registered as hereinafter set forth:

(a) The plan shall be registered in the office of the Administrator of the Attorney Registration and Disciplinary Commission within 15 days of the effective date of the plan on forms supplied by the Administrator.

(b) Amendments to any plan for group legal services and to any other documents required to be filed upon registration of a plan, made subsequent to the registration of the plan, shall be filed in the office of the Administrator no later than 30 days after the adoption of the amendment.

(c) The Administrator shall maintain an index of the plans registered pursuant to this rule. All documents filed in compliance with this rule shall be deemed public documents and shall be available for public inspection during normal business hours.

(d) Neither the Commission nor the Administrator shall approve or disapprove of any plan for group legal services or render any legal opinion regarding any plan. The registration of any plan under this rule shall not be construed to indicate approval or disapproval of the plan.

(e) Plans existing on the effective date of this order shall be registered on or before June 1, 1977.

(f) Subsequent to initial registration, all such plans shall be registered annually on or before July 1 on forms supplied by the Administrator. Plans initially registered prior to July 1, 1977, need not be registered again until July 1, 1978.

Adopted April 21, 1977, effective May 1, 1977; amended September 28, 1994, effective October 1,

1994.

Rules 731-50. Reserved

Part B. Registration and Discipline of Attorneys

Rule 751. Attorney Registration and Disciplinary Commission

(a) Authority of the Commission. The registration of, and disciplinary proceedings affecting, members of the Illinois bar, and unauthorized practice of law proceedings instituted under the authority of Rule 752(a), shall be under the administrative supervision of an Attorney Registration and Disciplinary Commission. Any lawyer admitted in another United States jurisdiction who provides legal services on a temporary basis in Illinois pursuant to Rule 5.5 of the Illinois Rules of Professional Conduct shall be subject to the administrative supervision of the Attorney Registration and Disciplinary Commission to the same extent as a lawyer licensed to practice law in this state. The authority granted in this paragraph to the Attorney Registration and Disciplinary Commission related to the unauthorized practice of law proceedings shall be independent of that granted by statute, regulation, or other legal authority to any governmental agency, entity, or individual to pursue action relating to the unauthorized practice of law, including but not limited to any action by the Illinois Attorney General or State's Attorney, or any action filed pursuant to the Illinois Attorney Act (705 ILCS 205/1).

(b) Membership and Terms. The Commission shall consist of four members of the Illinois bar and three nonlawyers appointed by the Supreme Court. One member shall be designated by the court as chairperson and one member shall be designated by the court as vice-chairperson. Unless the court specifies a shorter term, all members shall be appointed for three-year terms and shall serve until their successors are appointed. Any member of the Commission may be removed by the court at any time, without cause.

(c) Compensation. None of the members of the Commission shall receive compensation for serving as such, but all members shall be reimbursed for their necessary expenses.

(d) Quorum. Four members of the Commission shall constitute a quorum for the transaction of business. The concurrence of four members shall be required for all action taken by the Commission.

(e) Duties. The Commission shall have the following duties:

(1) to appoint, with the approval of the Supreme Court, an administrator to serve as the principal executive officer of the registration and disciplinary system. The Administrator shall receive such compensation as the Commission authorizes from time to time;

(2) to make rules for disciplinary and unauthorized practice of law proceedings not inconsistent with the rules of this court;

(3) to supervise the activities of the Administrator; supervision of the Administrator shall include review, after the fact, of representative samples of investigative matters concluded by the Administrator without reference to the Inquiry Board;

(4) to authorize the Administrator to hire attorneys, investigators and clerical personnel and to set the salaries of such persons;

(5) to appoint from time to time, as it may deem appropriate, members of the bar to serve as commissioners in addition to those provided for in Rule 753;

(6) to collect and administer the disciplinary fund provided for in Rule 756, to collect and remit to the Lawyers' Assistance Program provider the fee described in Rule 756(a)(1) and the Lawyers' Assistance Program Act (705 ILCS 235/1 *et seq.*), to collect and remit to the Lawyers Trust Fund the fee described in Rule 756(a)(1), to collect and remit to the Supreme Court Commission on Professionalism the fee described in Rule 756(a)(1), to collect and remit to the Supreme Court Commission on Access to Justice the fee described in Rule 756(a)(1) and, on or before April 30 of each year, file with the court an accounting of the monies received and expended for disciplinary activities and fees remitted to the Lawyers' Assistance Program provider, the Lawyers Trust Fund, the Supreme Court Commission on Professionalism, and the Supreme Court Commission on Access to Justice, and a report of such activities for the previous calendar year, which shall be published by the court, and there shall be an independent annual audit of the disciplinary fund as directed by the court, the expenses of which shall be paid out of the fund;

(7) to submit an annual report to the court evaluating the effectiveness of the registration and disciplinary system and recommending any changes it deems desirable; and

(8) to develop a comprehensive orientation program for new members of the Inquiry Board and implement that program.

Adopted January 25, 1973, effective February 1, 1973; amended effective May 17, 1973, April 1, 1974, and May 21, 1975; amended August 9, 1983, effective October 1, 1983; amended April 10, 1987, effective August 1, 1987; amended June 4, 1987, effective immediately; amended March 17, 1988, effective immediately; amended October 13, 1989, effective immediately; amended October 4, 2002, effective immediately; amended September 29, 2005, effective immediately; amended July 1, 2009, effective January 1, 2010; amended December 7, 2011, effective immediately; amended Jan. 17, 2013, eff. immediately; amended June 14, 2021, eff. July 1, 2021; amended Sept. 21, 2021, eff. Jan. 1, 2022.

Rule 752. Administrator

Subject to the supervision of the Commission, the Administrator shall:

(a) On his own motion, on the recommendation of an Inquiry Board or at the instance of an aggrieved party, investigate allegations of violations of the Rules of Professional Conduct of attorneys licensed in Illinois and attorneys admitted in another United States jurisdiction who provide legal services in Illinois pursuant to Rule 5.5 of the Illinois Rules of Professional Conduct and investigate allegations of the unauthorized practice of law, including investigations involving disbarred lawyers and other persons, entities, or associations that are not authorized to practice law by this Court.

(b) Assist each Inquiry Board in its investigations and prosecute disciplinary cases before the Hearing Boards, the Review Board, and the Court and prosecute unauthorized practice of law proceedings pursuant to Rule 779;

(c) Employ at such compensation as may be authorized by the Commission, such investigative, clerical and legal personnel as may be necessary for the efficient conduct of his office;

(d) Discharge any such personnel whose performance is unsatisfactory to him; and

(e) Maintain such records, make such reports and perform such other duties as may be prescribed by the Commission from time to time.

Adopted January 25, 1973, effective February 1, 1973; amended effective May 17, 1973, and April 1, 1974; amended March 17, 1988, effective immediately; amended December 7, 2011, effective immediately; amended Jan. 25, 2017, eff. immediately.

Rule 753. Inquiry, Hearing and Review Boards

(a) Inquiry Board

(1) There shall be an Inquiry Board. It shall consist of members of the bar of Illinois and nonlawyers appointed by the Commission to serve annual terms as commissioners of the court. Nonlawyer members shall be appointed to the Board in a ratio of two lawyers for each nonlawyer. The Commission may appoint as many members of the Board as it deems necessary to carry on the work of the Board.

(2) The Board shall inquire into and investigate matters referred to it by the Administrator. The Board may also initiate investigations on its own motion and may refer matters to the Administrator for investigation.

(3) After investigation and consideration, the Board shall dispose of matters before it by voting to dismiss the charge, to close an investigation, to file a complaint with the Hearing Board, or to institute unauthorized practice of law proceedings.

(4) The Board may act in panels. Each panel shall consist of two lawyers and one nonlawyer as designated by the Commission. The Commission shall designate one of the members of each panel as chairman. The majority of a panel shall constitute a quorum and the concurrence of a majority shall be necessary to a decision.

(b) Filing a Complaint. A disciplinary complaint voted by the Inquiry Board shall be prepared by the Administrator and filed with the Hearing Board. The complaint shall reasonably inform the attorney of the acts of misconduct he is alleged to have committed.

(c) Hearing Board

(1) There shall be a Hearing Board. It shall consist of members of the bar of Illinois and nonlawyers appointed by the Commission to serve annual terms as commissioners of the court. Members shall be appointed to the Board in a ratio of two lawyers for each nonlawyer.

(2) The Hearing Board may act in panels of not less than three members each, as designated by the Commission. The Commission shall also designate one of the lawyer members of each

panel as chairperson. The majority of a panel shall constitute a quorum and the concurrence of a majority shall be necessary to a decision. In the absence of the chairperson of a panel at a hearing, the lawyer member present shall serve as acting chairperson.

(3) The hearing panels shall conduct hearings on complaints filed with the Board and on petitions referred to the Board. The panel shall make findings of fact and conclusions of fact and law, together with a recommendation for discipline, dismissal of the complaint or petition, or nondisciplinary disposition. The Hearing Board may order that it will administer a reprimand to the respondent in lieu of recommending disciplinary action by the court.

(4) The scheduling of matters before the Board shall be in accordance with Commission rules.

(5) Proceedings before the Board, including discovery practice, shall be in accordance with the Code of Civil Procedure and the rules of the supreme court as modified by rules promulgated by the Commission pursuant to Supreme Court Rule 751(a). Information regarding prior discipline of a respondent will not be divulged to a hearing panel until after there has been a finding of misconduct, unless that information would be admissible for reasons other than to show a propensity to commit the misconduct in question.

(6) Except as otherwise expressly provided in these rules, the standard of proof in all hearings shall be clear and convincing evidence.

(d) Review of Hearing Board Reports

(1) Review Board. There shall be a nine-member Review Board which shall be appointed by the court. Appointments shall be for a term of three years or until a successor is appointed. Appointments to the Review Board shall be staggered, so that the terms of three members are scheduled to expire each year. No member shall be appointed for more than three consecutive three-year terms. One member shall be designated by the court as chairperson and one member may be designated by the court as vice-chairperson. The Review Board shall function in panels of three, presided over by the most senior member of the panel. The concurrence of two members of a panel shall be necessary to a decision.

(2) Exceptions; Agreed Matters. Reports of the Hearing Board shall be docketed with the Review Board upon the filing of a notice of exceptions by either party. The respondent or the Administrator may file exceptions to the report of the Hearing Board with the Review Board within 21 days of the filing of the report in the Commission. If neither the respondent nor the Administrator files a notice of exceptions to the Hearing Board report, and the report recommends action by the court, the clerk of the Attorney Registration and Disciplinary Commission shall submit the report of the Hearing Board to the court as an agreed matter. Upon the submission of any matter as an agreed matter, the clerk of the Commission shall give notice to the parties of that submission. Within 21 days after submission of the report to the court, the Administrator shall file a motion to approve and confirm the report of the Hearing Board. No response to this motion shall be filed unless ordered by the court on its own motion or pursuant to a motion for leave to respond. Upon receipt of the motion to approve and confirm, the court may enter a final order as recommended by the Hearing Board or as

otherwise determined by the court, order briefs or oral argument or both, or remand the matter with directions to the Hearing Board or the Review Board.

(3) Action by the Review Board. The Review Board may approve the findings of the Hearing Board, may reject or modify such findings as it determines are against the manifest weight of the evidence, may make such additional findings as are established by clear and convincing evidence, may approve, reject or modify the recommendations, may remand the proceeding for further action or may dismiss the proceeding. The Review Board may order that it will administer a reprimand to the respondent in lieu of recommending disciplinary action by the court. A copy of the report or order of the Review Board shall be served on the respondent and the Administrator.

(e) Review of Review Board Reports

(1) Petition for Leave to File Exceptions. Reports or orders of the Review Board shall be reviewed by the court only upon leave granted by the court or upon the court's own motion. Either party may petition the court for leave to file exceptions to the order or report of the Review Board. The petition shall be filed within 35 days of the filing of the order or report in the Commission. The supreme court, or a justice thereof, on motion supported by affidavit or verification by certification under section 1-109 of the Code of Civil Procedure may extend the time for petitioning for leave to file exceptions, but such motions are not favored and will be allowed only in the most extreme and compelling circumstances. (See Rule 361.)

(2) Grounds for Petition for Leave to File Exceptions. Whether a petition for leave to file exceptions will be granted is a matter of sound judicial discretion. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of the reasons which will be considered; the general importance of the question presented; the existence of a conflict between the report of the Review Board and prior decisions of the court; and the existence of a substantial disparity between the discipline recommended and discipline imposed in similar cases.

(3) Contents of Petition for Leave to File Exceptions. The petition for leave to file exceptions shall contain, in the following order:

(a) a request for leave to file exceptions;

(b) a statement of the date upon which the report of the Review Board was filed;

(c) a statement of the points relied upon for rejection of the report of the Review Board;

(d) a fair and accurate statement of the facts, which shall contain the facts necessary to an understanding of the case, without argument or comment, with appropriate references to the record by transcript page and exhibit number;

(e) a short argument (including appropriate authorities) stating why review by the supreme court is warranted and why the decision of the Review Board should be rejected; and

(f) a copy of the reports of the Hearing and Review Boards and proposed exceptions shall be appended to the petition. The petition shall otherwise be prepared, served, and filed

in accordance with requirements for briefs as set forth in Rule 341.

(4) Answer. The opposing party need not but may file an answer, with proof of service, within 14 days after the expiration of the time for the filing of the petition. The supreme court, or a justice thereof, on motion supported by affidavit or verification by certification under section 1-109 of the Code of Civil Procedure may extend the time for filing an answer, but such motions are not favored and will be allowed only in the most extreme and compelling circumstances. (See Rule 361.) An answer shall set forth reasons why the petition should not be granted, and shall conform, to the extent appropriate, to the form specified in this rule for the petition, omitting the first four items set forth in paragraph (3) except to the extent that correction of the petition is considered necessary. The answer shall otherwise be prepared, served, and filed in accordance with the requirements for briefs as set forth in Rule 341. No reply to the answer shall be filed.

(5) Ruling on Petition.

(a) If the court allows exceptions to an order or report of the Review Board, it may:

(i) enter a final order as recommended by the Review Board or as otherwise determined by the court;

(ii) enter an order remanding the matter with directions to the Hearing Board or the Review Board; or

(iii)accept the matter for further consideration.

If the case is accepted for further consideration, the clerk of the Attorney Registration and Disciplinary Commission shall transmit the record of the case to the court. Either party may assert error in any ruling, action, conclusion or recommendation of the Review Board without regard to whether the party filed exceptions. The petition for leave to file exceptions allowed by the court shall stand as the brief of the appellant. Remaining briefs shall be prepared, filed, and served in compliance with Rules 341 and 343. The parties shall not be entitled to oral argument before the court as of right. Oral argument may be requested in accordance with Rule 352.

(b) If the court denies leave to file exceptions, it may:

(i) enter a final order as recommended by the Review Board or as otherwise determined by the court; or

(ii) enter an order remanding the matter with directions to the Hearing Board or the Review Board.

(6) Agreed Matters. If a petition for leave to file exceptions is not timely filed and if the report of the Review Board recommends action by the court, the clerk of the Attorney Registration and Disciplinary Commission shall submit the report of the Review Board together with a copy of the report of the Hearing Board to the court as an agreed matter. Upon the submission of any matter as an agreed matter, the clerk of the Commission shall give notice to the parties of that submission. Within 21 days after submission of the report to the court, the Administrator shall file a motion to approve and confirm the report of the Review Board. No

response to this motion shall be filed unless ordered by the court on its own motion or pursuant to a motion for leave to respond. Upon receipt of the motion to approve and confirm, the court may enter a final order of discipline as recommended or as otherwise determined by the court, order briefs or oral argument or both, or remand the matter with directions to the Hearing Board or the Review Board.

(7) Finality of Review Board Decision. If exceptions are not filed and the order or report of the Review Board does not recommend disciplinary action by the court, the order or report of the Review Board shall be final.

(f) Duty of Respondent or Petitioner. It shall be the duty of the respondent or petitioner who is the subject of any investigation or proceeding contemplated by these rules to appear at any hearing at which his presence is required or requested. Failure to comply, without good cause shown, may be considered as a separate ground for the imposition of discipline or denial of a petition.

Adopted January 25, 1973, effective February 1, 1973; amended effective May 17, 1973, April 1, 1974, and May 21, 1975; amended October 1, 1976, effective November 15, 1976; amended August 9, 1983, effective October 1, 1983; amended July 1, 1985, effective August 1, 1985; amended October 13, 1989, effective immediately; amended October 16, 1990, effective November 1, 1990; amended May 26, 1993, effective immediately, amended October 15, 1993, effective immediately; amended December 30, 1993, effective January 1, 1994; amended February 2, 1994, effective immediately; amended December 1, 1995, effective immediately; amended June 29, 2006, effective September 1, 2006; amended December 7, 2011, effective immediately; amended Mar. 18, 2016, eff. immediately.

Rule 754. Subpoena Power

(a) Power to Take Evidence. The Administrator, the Inquiry Board and the Hearing Board are empowered to take evidence of respondents, petitioners and any other attorneys or persons who may have knowledge of the pertinent facts concerning any matter which is the subject of an investigation or hearing.

(b) Issuance of Subpoenas. The clerk of the court shall issue a subpoena *ad testificandum* or a subpoena *duces tecum* as provided below:

(1) upon request of the Administrator related to an investigation conducted pursuant to Rules 752, 753, 759, 767, 779, or 780 or related to a deposition or hearing before the Hearing Board; the Administrator may use a subpoena in an investigation conducted pursuant to Rule 753 until such time as a complaint is filed with the Hearing Board;

(2) upon request of the Inquiry or Hearing Board related to a proceeding pending before the Board;

(3) upon request of the respondent or the petitioner related to a deposition or hearing before the Hearing Board;

(4) upon request of the Administrator related to the investigation or review of a Client Protection Claim; or

(5) upon the request of the Administrator in aid of a person or entity authorized to compel a witness to appear by the laws governing lawyer discipline or disability investigations and proceedings in another jurisdiction, for that person or entity to compel a witness to appear in the county in Illinois in which the witness resided, is employed, or is served with the subpoena and to give testimony and/or produce documents, to the same extent authorized in the discipline or disability investigation and/or proceeding of the other jurisdiction. The person or entity seeking the issuance of a subpoena shall provide to the Administrator proof of authority to compel the attendance of the witness under the laws of the other jurisdiction.

(c) Service. Any witness shall respond to any lawful subpoena of which he or she has actual knowledge. Service of a subpoena upon the witness or his or her authorized agent may be proved *prima facie*:

(1) By written acknowledgement signed by the person served;

(2) In case of service by mail or by delivery to a third-party commercial carrier to the address which appeared on the envelope or package, by proof of delivery showing the name of the person served. For such service upon an attorney, "address" is defined as (i) the attorney's last known business or residence address or (ii) the address listed on the Master Roll or, if the attorney is not listed on the Master Roll, the address last designated by the attorney on the Master Roll or in the equivalent of the Master Roll in any jurisdiction, as defined in Supreme Court Rule 763, in which the attorney is or was licensed to practice law;

(3) In case of an otherwise agreed-upon method of service, including by electronic means, by an affidavit of service attesting to the agreed-upon method and stating the time, place, and destination of the delivery or transmission and written or electronic acknowledgement by the person served of the agreed-upon method of service.

(d) Fees and Costs. Respondents and petitioners shall not be entitled to a witness fee or reimbursement for costs to comply with any subpoena issued pursuant to this rule. All other persons shall be entitled to payment for fees, mileage and other costs as provided by law. Such payments shall be made by the Commission for a subpoena issued at the instance of the Administrator, the Inquiry Board or the Hearing Board. Such payments shall be made by the respondent or the petitioner for a subpoena issued at his instance.

(e) Judicial Review. A motion to quash a subpoena issued pursuant to this rule shall be filed with the court. Any person who fails or refuses to comply with a subpoena may be held in contempt of the court.

(f) Enforcement. A petition for rule to show cause why a person should not be held in contempt for failure or refusal to comply with a subpoena issued pursuant to this rule shall be filed with the court. Service of the petition shall be made in any manner in which service of process is authorized by Rule 765(a). Unless the court orders otherwise, the petition shall be referred to the chief judge of the circuit court of Cook County or Sangamon County or any other judge of those circuits designated by the chief judge. The designated judge shall be empowered to entertain petitions, hear evidence, and enter orders compelling compliance with subpoenas issued pursuant to this rule. When a petition is referred to the circuit court, the following procedures should be

followed:

(1) The Clerk of the Supreme Court shall forward a copy of the petition for rule to show cause to the designated judge of the circuit court and, at the same time, shall send notice to the party who filed the petition and all persons upon whom the petition was served that the matter has been referred to the circuit court. The notice shall name the judge to whom the matter has been referred and state the courthouse at which proceedings pertaining to the petition will be heard.

(2) Any answer to the petition or other responsive pleading shall be filed with the Clerk of the Supreme Court and a copy of such answer or other pleading shall be delivered to the judge to whom the matter has been referred by mailing or hand delivering the copy to the chambers of the designated judge. The proof of service for such answer or other responsive pleading shall state that delivery to the designated judge was made in accordance with this rule.

(3) Proceedings on the petition before the designated judge, including scheduling of hearings and time for serving notices of hearing, shall be governed by the rules of the circuit court in which the designated judge sits, unless otherwise ordered by the judge.

(4) The designated judge may enter any order available to the circuit court in the exercise of its authority to enforce subpoenas, including orders for confinement or fines. If the judge finds an attorney in contempt for failure to comply with a subpoena issued pursuant to this rule, in addition to entertaining any other order, the judge may also recommend that the court suspend the attorney from the practice of law in this State until the attorney complies with the subpoena. Upon issuance of such a recommendation by the designated judge, the Administrator shall file with the Clerk of the Supreme Court a petition seeking implementation of the recommendation of suspension.

Adopted January 25, 1973, effective February 1, 1973; amended May 21, 1975; amended June 12, 1987, effective August 1, 1987; amended November 29, 1990, effective December 1, 1990; amended March 28, 1994, effective immediately; amended April 1, 1994, effective immediately; amended December 7, 2011, effective immediately; amended Apr. 8, 2013, eff. immediately; amended Dec. 28, 2017, eff. Feb. 1, 2018.

Rule 755. Assistance of Members of the Bar; Rule-Making Power of Boards

(a) Assistance of Bar. The Commission and the inquiry, hearing and review boards may call to their assistance other members of the bar.

(b) Supplementary Rules. Subject to the approval of the Commission, the inquiry, hearing and review boards may make supplementary rules concerning the procedures before the respective boards.

Adopted January 25, 1973, effective February 1, 1973; amended August 9, 1983, effective October 1, 1983.

Rule 756. Registration and Fees

(a) Annual Registration Required. Except as hereinafter provided, every attorney admitted to practice law in this state shall register and pay an annual registration fee to the Commission on or before the first day of January. Every out-of-state attorney permitted to appear and provide legal services in a proceeding pursuant to Rule 707 shall register for each year in which the attorney has such an appearance of record in one or more proceedings. Annual registration fees and penalties paid for the year or prior years shall be deemed earned and non-refundable on and after the first day of January. Except as provided below, all fees and penalties shall be retained as a part of the disciplinary fund. The following schedule shall apply beginning with registration for 2021 and until further order of the Court:

(1) No registration fee is required of an attorney admitted to the bar less than one year before the first day of January for which the registration fee is due; an attorney admitted to the bar for more than one year but less than three years before the first day of January for which the registration fee is due shall pay an annual registration fee of $121; an out-of-state attorney permitted to appear and provide legal services pursuant to Rule 707 shall pay a registration fee of $121 for each year in which the attorney's appearance is of record in one or more such proceedings if a per-proceeding fee is required in any such proceeding under Rule 707(f); an attorney admitted to the bar for more than three years before the first day of January for which the registration fee is due shall pay an annual registration fee of $385, out of which $20 shall be remitted to the Lawyers' Assistance Program provider, $10 shall be remitted to the Supreme Court Commission on Access to Justice, $95 shall be remitted to the Lawyers Trust Fund, $25 shall be remitted to the Supreme Court Commission on Professionalism, and $25 shall be remitted to the Client Protection Program Trust Fund. For purposes of this rule, the time shall be computed from the date of the attorney's initial admission to practice in any jurisdiction in the United States.

(2) An attorney in the Armed Forces of the United States shall be exempt from paying a registration fee until the first day of January following discharge.

(3) No registration fee is required of any attorney during the period he or she is serving in one of the following offices in the judicial branch:

(A) in the office of justice, judge, associate judge or magistrate of a court of the United States of America or the State of Illinois; or

(B) in the office of judicial law clerk, administrative assistant, secretary or assistant secretary to such a justice, judge, associate judge or magistrate, or in any other office included within the Supreme Court budget that assists the Supreme Court in its adjudicative responsibilities, provided that the exemption applies only if the attorney is prohibited by the terms of his or her employment from actively engaging in the practice of law.

(4) Upon written application and for good cause shown, the Administrator may excuse the payment of any registration fee in any case in which payment thereof will cause undue hardship to the attorney.

(5) An attorney may advise the Administrator in writing that he or she desires to assume

inactive status and, thereafter, register as an inactive status attorney. The annual registration fee for an inactive status attorney shall be $121. Upon such registration, the attorney shall be placed upon inactive status and shall no longer be eligible to practice law or hold himself or herself out as being authorized to practice law in this state, except as is provided in paragraph (k) of this rule. An attorney who is on the master roll as an inactive status attorney may advise the Administrator in writing that he or she desires to resume the practice of law, and thereafter register as active upon payment of the registration fee required under this rule and submission of verification from the Director of MCLE that he or she has complied with MCLE requirements as set forth in Rule 790 *et seq.* If the attorney returns from inactive status after having paid the inactive status fee for the year, the attorney shall pay the difference between the inactive status registration fee and the registration fee required under paragraphs (a)(1) through (a)(3) of this rule. Inactive status under this rule does not include inactive disability status as described in Rules 757 and 758. Any lawyer on inactive disability status is not required to pay an annual fee.

(6) An attorney may advise the Administrator in writing that he or she desires to assume retirement status and, thereafter, register as a retired attorney. Upon such registration, the attorney shall be placed upon retirement status and shall no longer be eligible to practice law or hold himself or herself out as being authorized to practice law in this state, except as is provided in paragraph (k) of this rule. The retired attorney is relieved thereafter from the annual obligation to register and pay the registration fee. A retired attorney may advise the Administrator in writing that he or she desires to register as an active or inactive status lawyer and, thereafter so register upon payment of the fee required for the current year for that registration status, plus the annual registration fee that the attorney would have been required to pay if registered as active for each of the years during which the attorney was on retirement status. If the lawyer seeks to register as active, he or she must also submit, as part of registering, verification from the Director of MCLE of the lawyer's compliance with MCLE requirements as set forth in Rule 790 *et seq.*

(7) An attorney who is on voluntary inactive status pursuant to former Rule 770 who wishes to register for any year after 1999 shall file a petition for restoration under Rule 759. If the petition is granted, the attorney shall advise the Administrator in writing whether he or she wishes to register as active, inactive or retired, and shall pay the fee required for that status for the year in which the restoration order is entered. Any such attorney who petitions for restoration after December 31, 2000, shall pay a sum equal to the annual registration fees that the attorney would have been required to pay for each full year after 1999 during which the attorney remained on Rule 770 inactive status without payment of a fee.

(8) Permanent Retirement Status. An attorney may file a petition with the Court requesting that he or she be placed on permanent retirement status. All of the provisions of retirement status enumerated in Rule 756(a)(6) shall apply, except that an attorney who is granted permanent retirement status may not thereafter change his or her registration designation to active or inactive status, petition for reinstatement pursuant to Rule 767, or provide *pro bono* services as otherwise allowed under paragraph (k) of this rule.

(A) The petition for permanent retirement status must be accompanied by a consent from the Administrator, consenting to permanent retirement status. The Administrator may consent if no prohibitions listed in subparagraph (a)(8)(B) of this rule exist. If the petition is not accompanied by a consent from the Administrator, it shall be denied.

(B) An attorney shall not be permitted to assume permanent retirement status if:

1. there is a pending investigation or proceeding against the attorney in which clear and convincing evidence has or would establish that:

a. the attorney converted funds or misappropriated funds or property of a client or third party in violation of a rule of the Illinois Rules of Professional Conduct;

b. the attorney engaged in criminal conduct that reflects adversely on the attorney's honesty in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct; or

c. the attorney's conduct resulted in an actual loss to a client or other person and the Court's rules or precedent would allow for a restitution order for that type of loss in a disciplinary case, reinstatement case, or Client Protection Program award, unless restitution has been made; or

2. the attorney retains an active license to practice law in any jurisdictions other than the State of Illinois.

(C) If permanent retirement status is granted, any pending disciplinary investigation of the attorney shall be closed and any proceeding against the attorney shall be dismissed. The Administrator may resume such investigations pursuant to Commission Rule 54 and may initiate additional investigations and proceedings of the attorney as circumstances warrant. The permanently retired attorney shall notify other jurisdictions in which the he or she is licensed to practice law of his or her permanent retirement in Illinois. The permanently retired attorney may not reactivate a license to practice law or obtain a license to practice law in any other jurisdiction.

(b) The Master Roll. The Administrator shall prepare a master roll of attorneys consisting of the names of attorneys who have registered and have paid or are exempt from paying the registration fee and of recently admitted attorneys who are not yet required to register. The Administrator shall maintain the master roll in a current status. At all times a copy of the master roll shall be on file in the office of the clerk of the Court. An attorney who is not listed on the master roll is not entitled to practice law or to hold himself or herself out as authorized to practice law in this state. An attorney listed on the master roll as on inactive or retirement status shall not be entitled to practice law or to hold himself or herself out as authorized to practice law in Illinois, except as is provided in paragraph (k) of this rule.

(c) Registration.

(1) Each attorney is obliged to register on or before the first day of January of each year unless the attorney is on retirement status pursuant to paragraph (a)(6) of this rule, has been allowed to assume permanent retirement status pursuant to paragraph (a)(8) of this rule, or has been placed on inactive status pursuant to former Rule 770, except that an attorney not

authorized to practice law due to discipline or disability inactive status is not required to register until the conclusion of the discipline or disability inactive status.

(2) Registration requires that the attorney provide all information specified under paragraphs (c) through (g) of this rule. An attorney's registration shall not be complete until all such information has been submitted.

(3) On or before the first day of November of each year, the Administrator shall send to each attorney on the master roll a notice of the annual registration requirement. The notice may be sent to the attorney's listed master roll mail or email address. Failure to receive the notice shall not constitute an excuse for failure to register.

(4) Each attorney must submit registration information by means of the ARDC online registration system or other means specified by the Administrator. Registration payments may be submitted online, by check sent through the mail to the address designated by the Administrator, or through other means authorized by the Administrator.

(5) Each attorney shall update required registration information within 30 days of any change, except for those attorneys relieved of the registration obligation under a provision of this rule.

(6) Except as otherwise provided in this rule or Supreme Court Rule 766, information disclosed under paragraphs (c) through (g) shall not be confidential.

(d) Disclosure of Trust Accounts. Each lawyer shall identify any and all accounts maintained by the lawyer during the preceding 12 months to hold property of clients or third persons in the lawyer's possession in connection with a representation, as required under Rule 1.15(a) of the Illinois Rules of Professional Conduct, by providing the account name, account number and financial institution for each account. For each account, the lawyer shall also indicate whether each account is an IOLTA account, as defined in Rule 1.15(i)(2) of the Illinois Rules of Professional Conduct. If a lawyer does not maintain a trust account, the lawyer shall state the reason why no such account is required.

(e) Disclosure of Malpractice Insurance.

(1) Each lawyer, except for those registering pursuant to (a)(2), (a)(3), (a)(5), (a)(6), and (k)(5) of this rule, shall disclose whether the lawyer has malpractice insurance on the date of the registration, and if so, shall disclose the dates of coverage for the policy. If the lawyer does not have malpractice insurance on the date of registration, the lawyer shall state the reason why the lawyer has no such insurance. The reason why the lawyer does not have malpractice insurance shall be confidential. The Administrator may conduct random audits to assure the accuracy of information reported. Each lawyer shall maintain, for a period of seven years from the date the coverage is reported, documentation showing the name of the insurer, the policy number, the amount of coverage and the term of the policy, and shall produce such documentation upon the Administrator's request.

(2) Every other year, beginning with registration for 2018, each lawyer who discloses pursuant to paragraph (e)(1) that he or she does not have malpractice insurance and who is engaged in the private practice of law shall complete a self-assessment of the operation of his

or her law practice or shall obtain malpractice insurance and report that fact, as a requirement of registering in the year following. The lawyer shall conduct the self-assessment in an interactive online educational program provided by the Administrator regarding professional responsibility requirements for the operation of a law firm. The self-assessment shall require that the lawyer demonstrate an engagement in learning about those requirements and that the lawyer assess his or her law firm operations based upon those requirements. The self-assessment shall be designed to allow the lawyer to earn four hours of MCLE professional responsibility credit and to provide the lawyer with results of the self-assessment and resources for the lawyer to use to address any issues raised by the self-assessment. All information related to the self-assessment shall be confidential, except for the fact of completion of the self-assessment, whether the information is in the possession of the Administrator or the lawyer. Neither the Administrator nor the lawyer may offer this information into evidence in a disciplinary proceeding. The Administrator may report self-assessment data publicly in the aggregate.

(f) Disclosure of Voluntary *Pro Bono* Service. Each lawyer shall report the approximate amount of his or her *pro bono* legal service and the amount of qualified monetary contributions made during the preceding 12 months.

(1) *Pro bono* legal service includes the delivery of legal services or the provision of training without charge or expectation of a fee, as defined in the following subparagraphs:

(a) legal services rendered to a person of limited means;

(b) legal services to charitable, religious, civic, community, governmental or educational organizations in matters designed to address the needs of persons of limited means;

(c) legal services to charitable, religious, civic, or community organizations in matters in furtherance of their organizational purposes; and

(d) training intended to benefit legal service organizations or lawyers who provide *pro bono* services.

In a fee case, a lawyer's billable hours may be deemed *pro bono* when the client and lawyer agree that further services will be provided voluntarily. Legal services for which payment was expected, but is uncollectible, do not qualify as *pro bono* legal service.

(2) *Pro bono* legal service to persons of limited means refers not only to those persons whose household incomes are below the federal poverty standard, but also to those persons frequently referred to as the "working poor." Lawyers providing *pro bono* legal service need not undertake an investigation to determine client eligibility. Rather, a good-faith determination by the lawyer of client eligibility is sufficient.

(3) Qualified monetary contribution means a financial contribution to an organization as enumerated in subparagraph (1)(b) which provides legal services to persons of limited means or which contributes financial support to such an organization.

(4) As part of the lawyer's annual registration fee statement, the report required by subsection (f) shall be made by answering the following questions:

(a) Did you, within the past 12 months, provide any *pro bono* legal services as described in subparagraphs (1) through (4) below? ____ Yes ____ No

If no, are you prohibited from providing legal services because of your employment? ____ Yes ____ No

If yes, identify the approximate number of hours provided in each of the following categories where the service was provided without charge or expectation of a fee:

(1) hours of legal services to a person/persons of limited means;

(2) hours of legal services to charitable, religious, civic, community, governmental or educational organizations in matters designed to address the needs of persons of limited means;

(3) hours of legal services to charitable, religious, civic or community organizations in furtherance of their organizational purposes; and

(4) hours providing training intended to benefit legal service organizations or lawyers who provide *pro bono* services.

Legal services for which payment was expected, but is not collectible, do not qualify as *pro bono* services and should not be included.

(b) Have you made a monetary contribution to an organization which provides legal services to persons of limited means or which contributes financial support to such organization? ____ Yes ____ No

If yes, approximate amount: $_____.

(5) Information provided pursuant to this subsection (f) shall be deemed confidential pursuant to the provisions of Rule 766, but the Commission may report such information in the aggregate.

(g) Practice Related Information. Each attorney shall provide the following practice related information:

(1) An address, email address, and telephone number designated by the attorney as the attorney's listings on the master roll;

(2) The attorney's residential address, which shall be deemed to be the address required by paragraph (g)(1) above if the attorney has not provided such an address;

(3) The name of all other states of the United States in which the lawyer is licensed to practice law; and

(4) For attorneys on active status and engaged in the practice of law, the type of entity at which the attorney practices law, the number of attorneys in that organization, the lawyer's position within the entity, the lawyer's managerial responsibilities within the entity, the principal areas of law in which the attorney practices, whether the entity has an ethics or compliance officer or general counsel, and whether that organization has established a written succession plan.

Information provided pursuant to paragraphs (g)(2) and (g)(4) of this rule shall be deemed

confidential pursuant to this rule. Information pursuant to paragraph (g)(1) shall be confidential pursuant to this rule for a lawyer registered under paragraph (a)(5) or (a)(6) of this rule, on inactive status pursuant to former Rule 770, on permanent retirement status under paragraph (a)(8) of this rule, or exempt from payment of a fee under paragraph (a)(3) of this rule. The Administrator may release confidential information under paragraph (g)(1) of this rule upon written application demonstrating good cause and the absence of risk of harm to the lawyer. The Commission may report in the aggregate information made confidential by paragraph (g).

(h) Removal from the Master Roll. On or after February 1 of each year the Administrator shall remove from the master roll the name of any person who has not registered for that year. A lawyer will be deemed not registered for the year if the lawyer has not paid all required fees and has not provided the information required by paragraphs (c) through (g) of this rule. Any person whose name is not on the master roll and who practices law or who holds himself or herself out as being authorized to practice law in this state is engaged in the unauthorized practice of law and may also be held in contempt of the Court.

(i) Reinstatement to the Master Roll. An attorney whose name has been removed from the master roll solely for failure to register and pay the registration fee may be reinstated as a matter of course upon registering and paying the registration fee prescribed for the period of his or her suspension, plus the sum of $25 per month for each month that such registration fee is delinquent.

(j) No Effect on Disciplinary Proceedings. The provisions of this rule pertaining to registration status shall not bar, limit or stay any disciplinary investigations or proceedings against an attorney except to the extent provided in Rule 756(a)(8) regarding permanent retirement status.

(k) *Pro Bono* Authorization for Inactive and Retired Status Attorneys and Attorneys Admitted in Other States.

(1) Authorization to Provide *Pro Bono* Services. An attorney who is registered as inactive or retired under Rule 756(a)(5) or (a)(6), or an attorney who is admitted in another state and is not disbarred or otherwise suspended from practice in any jurisdiction shall be authorized to provide *pro bono* legal services under the following circumstances:

(a) without charge or an expectation of a fee by the attorney;

(b) to persons of limited means or to organizations, as defined in paragraph (f) of this rule; and

(c) under the auspices of a sponsoring entity, which must be a not-for-profit legal services organization, governmental entity, law school clinical program, or bar association providing *pro bono* legal services as defined in paragraph (f)(1) of this rule.

(2) Duties of Sponsoring Entities. In order to qualify as a sponsoring entity, an organization must submit to the Administrator an application identifying the nature of the organization as one described in section (k)(1)(c) of this rule and describing any program for providing *pro bono* services which the entity sponsors and in which attorneys covered under paragraph (k) may participate. In the application, a responsible attorney shall verify that the program will provide appropriate training and support and malpractice insurance for volunteers and that the sponsoring entity will notify the Administrator as soon as any attorney authorized to provide

services under this rule has ended his or her participation in the program. The organization is required to provide malpractice insurance coverage for any attorneys participating in the program and must inform the Administrator if the organization ceases to be a sponsoring entity under this rule.

(3) Procedure for Attorneys Seeking Authorization to Provide *Pro Bono* Services. An attorney admitted in Illinois who is registered as inactive or retired, or an attorney who is admitted in another state but not Illinois, who seeks to provide *pro bono* services under this rule shall submit a statement to the Administrator so indicating, along with a verification from a sponsoring entity or entities that the attorney will be participating in a *pro bono* program under the auspices of that entity. An attorney who is seeking authorization based on admission in another state shall also disclose all other state admissions and whether the attorney is the subject of any disbarment or suspension orders in any jurisdiction. The attorney's statement shall include the attorney's agreement that he or she will participate in any training required by the sponsoring entity and that he or she will notify the Administrator within 30 days of ending his or her participation in a *pro bono* program. Upon receiving the attorney's statement and the entity's verification, the Administrator shall cause the master roll to reflect that the attorney is authorized to provide *pro bono* services. That authorization shall continue until the end of the calendar year in which the statement and verification are submitted, unless the lawyer or the sponsoring entity sends notice to the Administrator that the program or the lawyer's participation in the program has ended.

(4) Renewal of Authorization. An attorney who has been authorized to provide *pro bono* services under this rule may renew the authorization on an annual basis by submitting a statement that he or she continues to participate in a qualifying program, along with verification from the sponsoring entity that the attorney continues to participate in such a program under the entity's auspices and that the attorney has taken part in any training required by the program. An attorney who is seeking renewal based on admission in another state shall also affirm that the attorney is not the subject of any disbarment or suspension orders in any jurisdiction.

(5) Annual Registration for Attorneys on Retired Status. Notwithstanding the provisions of Rule 756(a)(6), a retired status attorney who seeks to provide *pro bono* services under this rule must register on an annual basis, but is not required to pay a registration fee.

(6) MCLE Exemption. The provisions of Rule 791 exempting attorneys from MCLE requirements by reason of being registered as inactive or retired shall apply to inactive or retired status attorneys authorized to provide *pro bono* services under this rule, except that such attorneys shall participate in training to the extent required by the sponsoring entity.

(7) Disciplinary Authority. Lawyers admitted in another state who are providing legal services in this jurisdiction pursuant to this paragraph are subject to this Court's disciplinary authority and the Rules of Professional Conduct of this jurisdiction, as provided in Rule 8.5 of the Rules of Professional Conduct of 2010. Any lawyer who provides legal services pursuant to this rule shall not be considered to be engaged in the unlawful practice of law in this jurisdiction.

Adopted January 25, 1973, effective February 1, 1973; amended effective May 17, 1973, April 1, 1974, and February 17, 1977; amended August 9, 1983, effective October 1, 1983; amended April 27, 1984, and June 1, 1984, effective July 1, 1984; amended July 1, 1985, effective August 1, 1985; amended effective November 1, 1986; amended December 1, 1988, effective December 1, 1988; amended November 20, 1991, effective immediately; amended June 29, 1999, effective November 1, 1999; amended July 6, 2000, effective November 1, 2000; amended July 26, 2001, effective immediately; amended October 4, 2002, effective immediately; amended June 15, 2004, effective October 1, 2004; amended May 23, 2005, effective immediately; amended September 29, 2005, effective immediately; amended June 14, 2006, effective immediately; amended September 14, 2006, effective immediately; amended March 26, 2008, effective July 1, 2008; amended July 29, 2011, effective September 1, 2011; amended June 5, 2012, eff. immediately; amended June 21, 2012, eff. immediately; amended Nov. 28, 2012, eff. immediately; amended Apr. 8, 2013, eff. immediately; amended June 18, 2013, eff. July 1, 2013; amended March 20, 2014, eff. immediately; amended June 23, 2014, eff. immediately; amended Feb. 2, 2015, eff. immediately; amended May 27, 2015, eff. June 1, 2015; amended Apr. 1, 2016, eff. immediately; amended June 15, 2016, eff. immediately; amended Jan. 25, 2017, eff. immediately; amended May 25, 2018, eff. immediately; amended June 14, 2021, eff. July 1, 2021; amended Sept. 21, 2021, eff. Jan. 1, 2022.

Rule 757. Transfer to Disability Inactive Status Upon Involuntary Commitment or Upon Judicial Determination of Legal Disability Because of Mental Condition

(a) If an attorney admitted to practice in this State has been, because of mental condition, judicially declared to be a person under legal disability or in need of mental treatment, or has been involuntarily committed to a hospital on such grounds, the court shall enter an order transferring the attorney to disability inactive status until the further order of the court. If the Administrator files a motion to transfer an attorney to disability inactive status pursuant to this rule, the Administrator shall serve the motion upon the attorney in any manner in which service of process is authorized by Rule 765(a).

(b) Any disciplinary proceeding which may be pending against the attorney shall be stayed while he is on disability inactive status.

(c) No attorney transferred to disability inactive status may engage in the practice of law until restored to active status by order of the court.

Adopted March 30, 1973, effective April 1, 1973; title amended September 8, 1975, effective October 1, 1975; amended May 28, 1982, effective July 1, 1982; amended June 29, 1999, effective November 1, 1999; amended Dec. 28, 2017, eff. Feb. 1, 2018.

Rule 758. Mental Disability or Addiction to Drugs or Intoxicants

(a) Petition. If the Inquiry Board has reason to believe that an attorney admitted to practice in this State is incapacitated from continuing to practice law by reason of mental infirmity, mental disorder, or addiction to drugs or intoxicants, the Administrator shall file a petition with the Hearing Board requesting a hearing to determine whether the attorney is incapacitated and should

be transferred to disability inactive status pending the removal of the disability, or be permitted to continue to practice law subject to conditions imposed by the court.

(b) Hearing and Review Procedure. The hearing and review procedure shall be the same as provided in Rule 753 for disciplinary cases. The Administrator and the attorney may consent to a transfer to disability inactive status under the procedure set forth in Rule 762(a).

(c) Transfer to Disability Inactive Status. If the court determines that the attorney is incapacitated from continuing to practice law, the court shall enter an order transferring the attorney to disability inactive status until further order of the court. The court may impose reasonable conditions upon an attorney's continued practice of law warranted by the circumstances.

(d) Stay of Disciplinary Proceedings. Disciplinary proceedings pending against the attorney shall be stayed while the attorney is on disability inactive status.

(e) Practice of Law Prohibited. No attorney transferred to disability inactive status may engage in the practice of law until restored to active status by order of the court.

Adopted March 30, 1973, effective April 1, 1973; title amended September 8, 1975, effective October 1, 1975; amended June 1, 1984, effective July 1, 1984; amended October 16, 1990, effective November 1, 1990; amended June 29, 1999, effective November 1, 1999.

Rule 759. Restoration to Active Status

(a) Petition. An attorney transferred to disability inactive status under the provisions of Rules 757, 758 or, prior to November 1, 1999, pursuant to Rule 770 may file a petition with the court for restoration to active status. The petition must be accompanied by verification from the Director of MCLE that the attorney has complied with MCLE requirements as set forth in Rule 790 *et seq.* and verification from the Administrator that the attorney has reimbursed the Client Protection Program for all payments arising from petitioner's conduct pursuant to Rule 780(e). The petition shall be served on the Administrator, who shall have 21 days to answer the petition. If the Administrator consents or fails to file exceptions in the answer to the petition, the court may order that the petitioner be restored to active status without a hearing. If the Administrator excepts to the petition in the answer, the petition and answer shall be referred to the Hearing Board, which shall hear the matter.

(b) Hearing and Review Procedure. The hearing and review procedure shall be the same as provided in Rule 753 for disciplinary cases.

(c) Disposition. The court may impose reasonable conditions upon an attorney's restoration to active status as may be warranted by the circumstances. A restoration ordered under this rule shall be effective seven days after entry of the court's order allowing the petition provided that the petitioner produces to the Administrator within the seven days verification from the Director of MCLE that the attorney has complied with MCLE requirements as set forth in Rule 790 *et seq.*

(d) Resumption of Disciplinary Proceedings. If an attorney is restored to active status, disciplinary proceedings pending against the attorney may be resumed.

Adopted March 30, 1973, effective April 1, 1973; amended September 8, 1975, effective October 1, 1975; amended June 1, 1984, effective July 1, 1984; amended October 16, 1990, effective November 1, 1990; amended June 29, 1999, effective November 1, 1999; amended September 29, 2005, effective immediately; amended February 9, 2015, eff. immediately; amended June 22, 2017, eff. July 1, 2017.

Rule 760. Appointment of Medical Experts

(1) In any proceeding under Rules 757, 758, or 759, upon motion of the Administrator or the attorney, the court may order a mental or physical examination of the attorney. Such examination shall be conducted by a member of a panel of physicians chosen for their special qualifications by the Administrative Office of the Illinois Courts.

(2) Service of the motion shall be made in any manner in which service of process is authorized by Rule 765(a).

(3) The examining physician shall prepare a report of his examination, and copies of the report shall be given to the court, the Hearing Board, the Administrator, and the attorney.

(4) The Administrator, the attorney, or the Hearing Board may call the examining physician to testify. A physician so called shall be subject to cross-examination.

(5) The cost of the examination and the witness fees of the physician, if called to testify, shall be paid from the Disciplinary Fund.

Adopted March 30, 1973, effective April 1, 1973; amended September 8, 1975, effective October 1, 1975; amended March 19, 1997, effective April 15, 1997; amended December 16, 2010, effective immediately; amended Dec. 28, 2017, eff. Feb. 1, 2018.

Rule 761. Conviction of Crime

(a) Notification. It is the duty of an attorney admitted in this State who is convicted in any court of a felony or misdemeanor to notify the Administrator of the conviction in writing within 30 days of the entry of the judgment of conviction. The notification is required:

(1) whether the conviction results from a plea of guilty or of *nolo contendere* or from a judgment after trial; and

(2) regardless of the pendency of an appeal or other post-conviction proceeding.

(b) Conviction of Crime Involving Moral Turpitude. If an attorney is convicted of a crime involving fraud or moral turpitude, the Administrator shall file a petition with the court alleging the fact of such conviction and praying that the attorney be suspended from the practice of law until further order of the court. A certified copy of the judgment of conviction shall be attached to the petition and shall be *prima facie* evidence of the fact that the attorney was convicted of the crime charged.

(1) The petition shall be served upon the attorney in any manner in which service of process is authorized by Rule 765(a).

(2) Upon receipt of the petition the court shall issue a rule to show cause why the attorney should not be suspended from the practice of law until the further order of the court. The Administrator shall serve the rule upon the attorney:

(i) by personal service;

(ii) by any manner agreed upon by the parties;

(iii)if, on due inquiry, the attorney cannot be found or is concealed so that the rule to show cause cannot be served upon him or her, by ordinary mail, postage fully prepaid, directed to the attorney (A) at the address listed on the Master Roll, as defined in Rule 756(b), and to any other last known business or residence address or, (B) if the attorney is not listed on the Master Roll, at any address last designated by the attorney on the Master Roll or in the equivalent of the Master Roll in any jurisdiction, as defined in Rule 763, in which the attorney is or was licensed to practice law, and at his or her last known business or residence address. The Administrator's certificate of mailing or delivery is sufficient proof of service; or

(iv)by the attorney or counsel for the attorney filing with the court a statement accepting service of the rule to show cause, in which case no proof of service shall be required.

(3) After consideration of the petition and the answer to the rule to show cause, the court may enter an order, effective immediately, suspending the attorney from the practice of law until the further order of the court.

(c) Conviction of Crime Not Involving Moral Turpitude. If an attorney is convicted of a crime that does not involve fraud or moral turpitude, the Administrator shall refer the matter to the Inquiry Board.

(d) Hearing. Where an attorney has been convicted of a crime involving fraud or moral turpitude, a hearing shall be conducted before the Hearing Board to determine whether the crime warrants discipline, and, if so, the extent thereof.

(1) If the attorney has not appealed from the conviction, the Administrator shall file a complaint with the Hearing Board alleging the fact of the conviction.

(2) If the attorney has appealed from the conviction, the hearing shall be delayed until completion of the appellate process unless the attorney requests otherwise. If after the completion of the appellate process the conviction has not been reversed, the attorney shall notify the Administrator within 30 days of the mandate being filed in the trial court that the conviction was affirmed. Upon becoming aware that the conviction has been affirmed, the Administrator shall file a complaint with the Hearing Board as described in (1) above.

(e) Time of Hearing. Hearings pursuant to this rule shall commence within 60 days after the complaint is filed.

(f) Proof of Conviction. In any hearing conducted pursuant to this rule, proof of conviction is conclusive of the attorney's guilt of the crime.

(g) Hearing and Review Procedure. The hearing and review procedure shall be the same as

provided in Rule 753 for disciplinary cases.

Adopted March 30, 1973, effective April 1, 1973; amended July 16, 1973; amended September 8, 1975, effective October 1, 1975; amended August 9, 1983, effective October 1, 1983; amended June 1, 1984, effective July 1, 1984; amended Dec. 28, 2017, eff. Feb. 1, 2018.

Rule 762. Disbarment and Other Discipline on Consent

(a) Disbarment on Consent. If, while any charge of misconduct is under investigation or pending against him before the Inquiry Board, Hearing Board or Review Board, an attorney files with the court a motion to strike his name from the roll of attorneys admitted to practice law in this State, the clerk of the court shall immediately file with the Administrator a copy of the motion. Within 21 days thereafter the Administrator shall file with the court and serve upon the attorney respondent a statement of charges which shall set forth a description of the evidence which would be presented against the attorney respondent if the cause proceeded to hearing and the findings of misconduct which that evidence would support. Within 14 days after the statement of charges is filed with the court, the attorney respondent shall file with the court his affidavit stating that:

(1) he has received a copy of the statement of charges;

(2) if the cause proceeded to a hearing, the Administrator would present the evidence described in the statement of charges, and that evidence would clearly and convincingly establish the facts and conclusions of misconduct set forth in the statement of charges; except that in cases where the charges are based upon a judgment of conviction of a crime, it shall be sufficient that the attorney respondent state that if the matter proceeded to hearing, the judgment of conviction would be offered into evidence and would constitute conclusive evidence of his guilt of the crime for purposes of disciplinary proceedings;

(3) his motion is freely and voluntarily made; and

(4) he understands the nature and consequences of his motion.

If the attorney respondent fails to file the required affidavit within the 14-day period provided above, or in the event the affidavit does not contain the statements required by subparagraphs (1), (2), (3) and (4) above, the court may deny the attorney's motion to strike his name from the roll of attorneys admitted to practice law in this State. If the court allows the motion, the facts and conclusions of misconduct set forth in the Administrator's statement of charges shall be deemed established and conclusive in any future disciplinary proceedings related to the attorney, including any proceedings under Rule 767.

(b) Other Discipline on Consent.

(1) *Petition.* The Administrator and respondent may file with the court as an agreed matter a petition to impose discipline on consent under the following circumstances:

(a) during the pendency of a proceeding before the court; or

(b) during the pendency of a proceeding before the Review, Hearing or Inquiry Boards and with the approval of the board before which the proceeding is pending.

(2) *Content of Petition.* The petition shall be prepared by the Administrator and shall set

forth the misconduct and a recommendation for discipline.

(3) *Affidavit.* Attached to the petition shall be an affidavit executed by the attorney stating that:

(a) he has read the petition;

(b) the assertions in the petition are true and complete;

(c) he joins in the petition freely and voluntarily; and

(d) he understands the nature and consequences of the petition.

The affidavit may recite any other facts which the attorney wishes to present to the court in mitigation.

(4) *Submission to Court.* The Administrator shall file the petition and affidavit with the Clerk of the court. The Clerk shall submit the matter to the court as an agreed matter.

(5) *Action on Petition.* The court may allow the petition and impose the discipline recommended in the petition. Otherwise, the court shall deny the petition. If the petition is denied, the proceeding will resume as if no petition had been submitted. No admission in the petition may be used against the respondent. If the proceeding resumes before the Inquiry or Hearing Board, the proceeding will be assigned to a different panel of the Board.

Adopted March 30, 1973, effective April 1, 1973; amended May 21, 1975; amended October 13, 1989, effective immediately; amended January 5, 1993; amended June 22, 2017, eff. July 1, 2017.

Rule 763. Reciprocal Disciplinary Action

(a) If an attorney licensed to practice law in Illinois and another jurisdiction is disciplined in the other jurisdiction, the attorney may be subjected to the same or comparable discipline in Illinois, upon proof of the order of the other jurisdiction imposing the discipline. For purposes of this rule, "other jurisdiction" is defined as the District of Columbia; a country other than the United States; a state, province, territory, or commonwealth of the United States or another country.

(b) The Administrator shall initiate proceedings under this rule by filing a petition with the court, to which a certified copy of the order of the other jurisdiction is attached. The Administrator shall serve the petition upon the attorney in any manner in which service of process is authorized by Rule 765(a).

(c) Within 21 days after service of a copy of the petition upon him the attorney may file a request for a hearing on the petition. If the court allows the request for a hearing, the hearing shall be held before the Hearing Board no less than 14 days after notice thereof is given to the attorney respondent and the Administrator. At the hearing the attorney may be heard only on the issues as to (1) whether or not the order of the other jurisdiction was entered; (2) whether it applies to the attorney; (3) whether it remains in full force and effect; (4) whether the procedure in the other jurisdiction resulting in the order was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process of law; and (5) whether the conduct of the attorney warrants substantially less discipline in Illinois.

(d) If an attorney is suspended until further order of the Court or disbarred in Illinois pursuant to this rule, reinstatement in Illinois shall be governed by the provisions of Rule 767.

(e) Nothing in this rule shall prohibit the institution of independent disciplinary proceedings in this State against any attorney based upon his conduct in another jurisdiction, and, in the event the Administrator elects to proceed independently, any discipline imposed in this State shall not be limited to the discipline ordered by the other jurisdiction.

Adopted March 30, 1973, effective April 1, 1973; amended September 21, 1994, effective October 1, 1994; amended February 9, 2015, eff. immediately; amended June 22, 2017, eff. July 1, 2017; amended Dec. 28, 2017, eff. Feb. 1, 2018.

Rule 764. Duties of a Disciplined Attorney and Attorneys Affiliated with Disciplined Attorney

An attorney who is disbarred, disbarred on consent, or suspended for six months or more shall comply with each of the following requirements. Compliance with each requirement shall be a condition to the reinstatement of the disciplined attorney. Failure to comply shall constitute contempt of court.

Any and all attorneys who are affiliated with the disciplined attorney as a partner or associate shall take reasonable action necessary to insure that the disciplined attorney complies with the provisions of paragraphs (a), (b), (c), (d), and (e) below. Within 35 days of the effective date of the order of discipline, each affiliated attorney or a representative thereof shall file with the clerk of the supreme court and serve upon the Administrator a certification setting forth in detail the actions taken to insure compliance with paragraphs (a), (b), (c), (d), and (e) below.

(a) Maintenance of Records. The disciplined attorney shall maintain:

(1) files, documents, and other records relating to any matter which was the subject of a disciplinary investigation or proceeding;

(2) files, documents, and other records relating to any and all terminated matters in which the disciplined attorney represented a client at any time prior to the imposition of discipline;

(3) files, documents, and other records of pending matters in which the disciplined attorney had some responsibility on the date of, or represented a client during the year prior to, the imposition of discipline;

(4) all financial records related to the disciplined attorney's practice of law during the seven years preceding the imposition of discipline, including but not limited to bank statements, time and billing records, checks, check stubs, journals, ledgers, audits, financial statements, tax returns and tax reports; and

(5) all records related to compliance with this rule.

(b) Withdrawal from Law Office and Removal of Indicia as Lawyer. Upon entry of the final order of discipline, the disciplined attorney shall not maintain a presence or occupy an office where the practice of law is conducted. The disciplined attorney shall take such action necessary

to cause the removal of any indicia of the disciplined attorney as lawyer, counsellor at law, legal assistant, legal clerk, or similar title.

(c) Notification to Clients. Within 21 days after the entry of the final order of discipline, the disciplined attorney shall notify, by certified mail, return receipt requested, all clients whom the disciplined attorney represented on the date of the imposition of discipline, of the following:

(1) the action taken by the supreme court;

(2) that the disciplined attorney may not continue to represent them during the period of discipline;

(3) that they have the right to retain another attorney; and

(4) that their files, documents, and other records are available to them, designating the place where they are available.

(d) List of Clients. Within 21 days after the effective date of an order of discipline, the disciplined attorney shall file with the clerk of the supreme court and serve upon the Administrator an alphabetical list of the names, addresses, telephone numbers and file numbers of all clients whom the disciplined attorney represented on the date of, or during the year prior to, the imposition of discipline. At the same time, the disciplined attorney shall serve upon the Administrator a copy of each notification served pursuant to paragraph (c) above.

(e) Notification to Courts. Within 21 days of the effective date of the order of discipline, the disciplined attorney shall file a notice before the court in all pending matters in which the disciplined attorney is counsel of record and request withdrawal of his appearance. The notice shall advise the court of the action taken by the supreme court. The notice shall be served upon the disciplined attorney's former client and all other parties who have entered an appearance.

(f) Notification to Others. Within 21 days of the effective date of the order of discipline, the disciplined attorney shall, by certified mail, return receipt requested, notify the following of the action taken by the supreme court and his inability, during the period of discipline, to practice law in the State of Illinois:

(1) all attorneys with whom the disciplined attorney was associated in the practice of law on the effective date of the order of discipline;

(2) all attorneys of record in matters in which the disciplined attorney represented a client on the effective date of the order of discipline;

(3) all parties not represented by an attorney in matters in which the disciplined attorney represented a client on the effective date of the order of discipline;

(4) all other jurisdictions in which the disciplined attorney is licensed to practice law; and

(5) all governmental agencies before which the disciplined attorney is entitled to represent a person.

(g) Affidavit of Disciplined Attorney. Within 35 days after the effective date of an order of discipline, the disciplined attorney shall file with the clerk of the supreme court and serve upon the Administrator an affidavit stating:

(1) the action the disciplined attorney has taken to comply with the order of discipline;

(2) the action the disciplined attorney has taken to comply with this rule;

(3) the arrangements made to maintain the files and other records specified in paragraph (a) above;

(4) the address and telephone number at which subsequent communications may be directed to him; and

(5) the identity and address of all other State, Federal, and administrative jurisdictions to which the disciplined attorney is admitted to practice law.

(h) Compensation Arising from Former Law Practice. Provided that the disciplined attorney complies with the provisions of this rule, the disciplined attorney may receive compensation on a *quantum meruit* basis for legal services rendered prior to the effective date of the order of discipline. The disciplined attorney may not receive any compensation related to the referral of a legal matter to an attorney or attributed to the "good will" of his former law office.

(1) *Matters in which Legal Proceedings Instituted.* The disciplined attorney shall not receive any compensation regarding a matter in which a legal proceeding was instituted at any time prior to the imposition of discipline without first receiving approval of the tribunal.

(2) *Other Aspects of Former Law Office.* The disciplined attorney shall not receive any compensation related to any agreement, sale, assignment or transfer of any aspect of the disciplined attorney's former law office without first receiving the approval of the supreme court. Prior to entering into any such transaction, the disciplined attorney shall file a petition in the supreme court and serve a copy upon the Administrator. The petition shall disclose fully the transaction contemplated, shall attach any and all related proposed agreements and documents, and shall request approval of the transaction. The Administrator shall answer or otherwise plead to the petition within 28 days of service of the petition on the Administrator. If the supreme court determines that an evidentiary hearing is necessary, it may refer the matter to the circuit court for hearing.

(i) Change of Address or Telephone Number. Within 35 days of any change of the disciplined attorney's address or telephone number during the period of discipline, the disciplined attorney shall notify the Administrator of the change.

(j) Modification of Requirements. On its own motion or at the request of the Administrator or respondent, the supreme court may modify any of the above requirements.

Adopted March 30, 1973, effective April 1, 1973; amended October 20, 1989, effective November 1, 1989; amended August 27, 1990, effective immediately.

Rule 765. Service

(a) Service of Process. If service of process is required in proceedings before the court under these rules, except as otherwise provided, such service shall be made by a party or agent of the party over the age of 18 in any of the following ways, or by any manner agreed upon by the parties:

(1) In any manner authorized by the Code of Civil Procedure;

(2) By delivery, mailing, or electronic transmission. Delivery or mailing shall be made to any last known business or residence address, and for service upon a party who is an attorney, delivery or mailing shall also be made (i) to the address listed on the Master Roll or, (ii) if the attorney is not listed on the Master Roll, at any address last designated by the attorney on the Master Roll or in the equivalent of the Master Roll in any jurisdiction, as defined in Rule 763, in which the respondent is or was licensed to practice law. Electronic transmission shall be made to any last known e-mail address, and for a party who is an attorney, electronic transmission shall also be made to the e-mail address listed on the most recent Master Roll. As part of service under this paragraph, the Administrator shall conduct due inquiry regarding the last known business and residential address; or

(3) By entry of appearance by or on behalf of a party before service has been otherwise effectuated, in which case the action shall proceed as if process had been served at the time of the entry of appearance, and no proof of service shall be required.

(b) Service Other Than Process. Service of a document other than process shall be made pursuant to Rule 11, unless otherwise provided.

(c) Proof of Service. When a proof of service is required, proof of service shall be filed with the clerk of the court in accordance with Rule 12. If service is effectuated by personal or abode service (as defined in section 2-203(a) of the Code of Civil Procedure), proof of service shall include the information required by section 2-203(b) of the Code of Civil Procedure. Proof of service effectuated under paragraph (a)(2) of this rule shall include a recitation of the due inquiry conducted and the information acquired during the inquiry.

Adopted March 30, 1973, effective April 1, 1973; amended May 21, 1975; amended May 28, 1982, effective July 1, 1982; amended October 16, 1990, effective November 1, 1990; amended Dec. 28, 2017, eff. Feb. 1, 2018.

Committee Comments

In 1990, Rule 765 was revised to provide for service of notices, pleadings and other documents by lawful means other than personal service on an attorney, and for appointment of the clerk of the supreme court as the agent of any attorney who fails to provide the Administrator with a registration address.

These revisions will reduce the expenses incurred in personally serving hundreds of documents, such as notices, complaints, petitions, subpoenas and rules to show cause, and the delays which result from locating and perfecting service on attorneys who attempt to avoid service. Because the revised rule allows for service to be perfected by delivery of an item to a registration address, resources presently committed to serving recalcitrant attorneys could be devoted to conducting investigations and reducing unnecessary delay in processing charges.

Additionally, the revised rule allows for service to be obtained on attorneys who fail to register or who fail to give the Administrator a registration address by filing documents with the clerk of the supreme court. The revision is modeled, in part, on the Illinois Vehicle Code, which provides

that use of a vehicle on Illinois roads constitutes consent to the appointment of the Secretary of State as an agent for the service of process (see Ill. Rev. Stat. 1989, ch. 95½, par. 10--301), and in part on similar rules in use in Indiana and Ohio (Indiana Admission and Discipline Rule 23, §12; Ohio Grievance Rule 5; see *Matter of Carmody* (Ind. 1987), 513 N.E.2d 649; *Columbus Bar Association v. Gross* (1982), 2 Ohio St. 3d 5, 441 N.E.2d 570; see also *Bell Federal Savings & Loan Association v. Horton* (1978), 59 Ill. App. 3d 923, 376 N.E.2d 1029).

Rule 766. Confidentiality and Privacy

(a) Public Proceedings. Proceedings under Rules 751 through 780 shall be public with the exception of the following matters, which shall be private and confidential:

(1) investigations conducted by the Administrator;

(2) proceedings before the Inquiry Board;

(3) proceedings pursuant to Rule 753 before the Hearing Board prior to the service of a complaint upon the respondent;

(4) information pursuant to which a board or the court has issued a protective order;

(5) deliberations of the Hearing Board, the Review Board and the court;

(6) proceedings before the Hearing and Review Boards pursuant to Rule 758;

(7) proceedings pursuant to Rule 760;

(8) deliberations of the Commission and minutes of Commission meetings;

(9) deliberations related to a claim submitted under the Client Protection Program;

(10) information concerning trust accounts provided by lawyers as part of the annual registration pursuant to Rule 756(d); and

(11) information concerning *pro bono* services and monetary contributions in support of *pro bono* services provided by lawyers as part of the annual registration pursuant to Rule 756(f).

(b) Disclosures of Confidential Information.

(1) *Public Information of Misconduct.* Where there is public information of allegations which, if true, could result in discipline, the Administrator, with the approval of the court or a member thereof, and in the interest of the public and the legal profession, may disclose whether the matter is being investigated.

(2) *Disclosures in the Interests of Justice.* In the interests of justice and on such terms as it deems appropriate the court or a member thereof may authorize the Administrator to produce, disclose, release, inform, report or testify to any information, reports, investigations, documents, evidence or transcripts in the Administrator's possession.

(3) *Referral to Lawyers' Assistance Program.* When an investigation by the Administrator reveals reasonable cause to believe that a respondent is or may be addicted to alcohol or other chemicals, is or may be abusing the use of alcohol or other chemicals, or is or may be experiencing a mental health condition or other problem that is impairing the respondent's

ability to practice law, the information giving rise to this belief may be communicated to the Lawyers' Assistance Programs, Inc., or comparable organization designed to assist lawyers with substance abuse or mental health problems.

Adopted March 30, 1973, effective April 1, 1973; amended April 1, 1974; amended October 1, 1976, effective November 15, 1976; amended June 1, 1984, effective July 1, 1984; amended October 13, 1989, effective immediately; amended March 28, 1994, effective immediately; amended November 19, 2004, effective January 1, 2005; amended March 29, 2006, effective immediately; amended June 14, 2006, effective immediately.

Rule 767. Reinstatement

(a) Petition. An attorney who has been disbarred, disbarred on consent or suspended until further order of the court may file his verified petition with the clerk of the court seeking to be reinstated to the roll of attorneys admitted to practice law in this State. No petition shall be filed within a period of five years after the date of an order of disbarment, three years after the date of an order allowing disbarment on consent, two years after the date of an order denying a petition for reinstatement, or one year after an order allowing the petition for reinstatement to be withdrawn. No petition for reinstatement shall be filed by an attorney suspended for a specified period and until further order of the court, until the specified period of time has elapsed. The petition shall set forth the date on which discipline was imposed, the attorney's intent to be reinstated to the roll of attorneys admitted to practice law in this State, and a statement that the attorney has deposited $1500 with the Attorney Registration and Disciplinary Commission to be applied against the costs of the reinstatement proceeding and that a receipt of payment is attached as required in paragraph (c). Also attached to the petition shall be an affidavit executed by the attorney stating that the attorney has provided or will provide to the Administrator the information required in Commission Rule 402 at the time the petition for reinstatement is served upon the Administrator.

(b) Presentation of Petition. An attorney who has been disbarred, disbarred on consent or suspended until further order of the court may present to the Administrator a copy of the petition he proposes to file with the clerk, along with the information specified by Commission Rule 402, within 120 days prior to the date on which the petition may be filed.

(c) Costs. The petition shall be accompanied by a receipt showing payment to the Commission of a $1500 deposit to be applied against the costs, as defined in Rule 773, necessary to the investigation, hearing and review of the petition. If the costs exceed the amount of the deposit, the petitioner shall pay the excess at the conclusion of the matter pursuant to the procedures of Rule 773. If the deposit exceeds the costs, the excess shall be refunded to the petitioner.

(d) Notice of Petition. The Administrator shall give notice to the following:

(1) the chief judge of each circuit in which the petitioner maintained an office or engaged in the practice of law; and

(2) the president of each local or county bar association in each county in which the petitioner maintained an office or engaged in the practice of law.

(e) Form of Notice. The notice shall be in substantially the following form:

NOTICE OF PETITION FOR
REINSTATEMENT AS ATTORNEY

_____, who was licensed to practice law in the State of Illinois on _____ and who was (suspended from the practice of law on _____) (disbarred on _____), has filed (has stated his intention to file) in the Supreme Court of Illinois a petition for readmission to the practice of law in Illinois. A hearing on that petition will be held.

Any person desiring to be heard or having relevant information may communicate with the Administrator of the Attorney Registration and Disciplinary Commission at (insert address and telephone number of Administrator's office concerned).

(f) Factors to Be Considered. The petition shall be referred to a hearing panel. The panel shall consider the following factors, and such other factors as the panel deems appropriate, in determining the petitioner's rehabilitation, present good character and current knowledge of the law:

(1) the nature of the misconduct for which the petitioner was disciplined;

(2) the maturity and experience of the petitioner at the time discipline was imposed;

(3) whether the petitioner recognizes the nature and seriousness of the misconduct;

(4) when applicable, whether petitioner has made restitution;

(5) the petitioner's conduct since discipline was imposed; and

(6) the petitioner's candor and forthrightness in presenting evidence in support of the petition.

(g) Report of Hearing Panel. The hearing panel shall make a report of its findings and recommendations. A copy of the report shall be served upon the petitioner and upon the Administrator.

(h) Hearing and Review Procedure. The hearing and review procedure shall be the same as provided in Rule 753 for disciplinary cases.

Adopted March 30, 1973, effective April 1, 1973; amended September 8, 1975, effective October 1, 1975; amended effective February 17, 1977; amended May 26, 1978, effective July 1, 1978; amended August 9, 1983, effective October 1, 1983; amended June 1, 1984, effective July 1, 1984; amended May 23, 2005, effective immediately; amended May 23, 2019, eff. July 1, 2019; amended Sept. 20, 2019, eff. Jan. 1, 2020.

Commentary
(May 23, 2005)

Paragraph (c) is amended to provide that the procedures of Rule 773 to recover costs are applicable in all respects to a reinstatement proceeding

Rule 768. Notification of Disciplinary Action

Upon the date on which an order of this court disbarring or suspending an attorney, or transferring him to disability inactive status becomes final, the clerk shall forthwith transmit the order to the attorney, the presiding judge of each of the Illinois Appellate Court Districts, the chief judge of each of the judicial circuits of Illinois, the chief judge of each of the United States district courts in Illinois, and the chief judge of the United States Court of Appeals for the Seventh Circuit. The Administrator shall forthwith provide a copy of the order to each other jurisdiction in which the attorney is known to be licensed to practice law and to the National Regulatory Data Bank administered by the American Bar Association.

Adopted March 30, 1973, effective April 1, 1973; amended June 29, 1999, effective November 1, 1999; amended February 9, 2015, eff. immediately; amended June 22, 2017, eff. July 1, 2017.

Rule 769. Maintenance of Records

It shall be the duty of every attorney to maintain originals, copies or computer-generated images of the following:

(1) records which identify the name and last known address of each of the attorney's clients and which reflect whether the representation of the client is ongoing or concluded; and

(2) all financial records related to the attorney's practice, for a period of not less than seven years, including but not limited to bank statements, time and billing records, checks, check stubs, journals, ledgers, audits, financial statements, tax returns and tax reports.

Adopted October 20, 1989, effective November 1, 1989; amended July 18, 1990, effective August 1, 1990 Adopted December 2, 1986, effective January 1, 1987; amended June 12, 1987, effective August 1, 1987; amended November 25, 1987, effective November 25, 1987; amended August 6, 1993, effective immediately; amended October 15, 1993, effective immediately; amended March 26, 2001, effective immediately; amended April 1, 2003, effective immediately.

Committee Comment
(April 1, 2003)

This amendment gives attorneys the option of maintaining records in forms that save space and reduce cost without increasing the risk of premature destruction. For example, CDs and DVDs have a normal life exceeding seven years, so an attorney might use them to maintain financial records. At present, however, floppy disks, tapes, hard drives, zip drives, and other magnetic media have insufficient normal life to meet the requirements of this rule.

Rule 770. Types of Discipline

Conduct of attorneys which violates the Rules of Professional Conduct contained in article VIII of these rules shall be grounds for discipline by the Court. Discipline may be:

(a) disbarment;

(b) disbarment on consent;

(c) suspension for a specified period and until further order of Court;

(d) suspension for a specified period of time;

(e) suspension until further order of the Court;

(f) suspension for a specified period of time or until further order of the Court with probation;

(g) censure; or

(h) reprimand by the Court, the Review Board or a hearing panel.

Adopted May 26, 1978, effective July 1, 1978; amended June 3, 1980, effective July 1, 1980; amended August 9, 1983, effective October 1, 1983; amended October 13, 1989, effective immediately; amended and renumbered March 23, 2004, effective April 1, 2004; amended Jan. 25, 2017, eff. immediately.

Commentary
(March 23, 2004)

Effective April 1, 2004, former Rule 771 ("Types of Discipline") was renumbered as Rule 770 and a new Rule 771 ("Finality of Orders and Effective Date of Discipline") was adopted.

Rule 771. Finality of Orders and Effective Date of Discipline

(a) Finality. All orders imposing discipline pursuant to these rules, except orders entered in cases that were accepted by the court for further consideration pursuant to Rule 753(e)(5)(a)(iii), are final when filed by the clerk of the court, and the mandates in all such cases shall issue at the time the orders are filed. No petition for rehearing pursuant to Rule 367 may be filed in such a case, nor will any motion or other paper submitted after an order is filed automatically stay or recall the court's mandate. The finality of orders imposing discipline entered in cases accepted by the court for further consideration pursuant to Rule 753(e)(5)(a)(iii) shall be governed by Rules 367 and 368.

(b) Effective Date. Unless otherwise ordered by the court or unless governed by Rules 367 and 368, all orders of discipline are effective when filed by the clerk of the court, except that orders of suspension for a specified period of time which do not continue until further order of court or any orders of suspension which are stayed, in part, by a period of probation become effective 21 days after the date they are filed by the clerk of the court.

(c) Interim Suspension. Unless otherwise ordered by the court, all interim suspension orders imposed under Rule 761 or Rule 774 and all subsequent disciplinary orders entered while the lawyer is on interim suspension are effective when filed by the clerk of the court.

Adopted March 23, 2004, effective April 1, 2004.

Commentary
(March 23, 2004)

Effective April 1, 2004, a new Rule 771 ("Finality of Orders and Effective Date of Discipline") was adopted and the former Rule 771 ("Types of Discipline") was renumbered as Rule 770.

Rule 772. Probation

(a) Qualifications. The court may order that an attorney be placed on probation if the attorney has demonstrated that he:

(1) can perform legal services and the continued practice of law will not cause the courts or profession to fall into disrepute;

(2) is unlikely to harm the public during the period of rehabilitation and the necessary conditions of probation can be adequately supervised;

(3) has a disability which is temporary or minor and does not require treatment and transfer to disability inactive status; and

(4) is not guilty of acts warranting disbarment.

Probation shall be ordered for a specified period of time or until further order of the court in conjunction with a suspension which may be stayed in whole or in part.

(b) Conditions. The order placing an attorney on probation shall state the conditions of probation. The conditions shall take into consideration the nature and circumstances of the misconduct and the history, character and condition of the attorney. The following conditions, and such others as the court deems appropriate, may be imposed:

(1) periodic reports to the Administrator;

(2) supervision over trust accounts as the court may direct;

(3) satisfactory completion of a course of study;

(4) successful completion of the multistate Professional Responsibility Examination;

(5) restitution;

(6) compliance with income tax laws and verification of such to the Administrator;

(7) limitations on practice;

(8) psychological counseling and treatment;

(9) the abstinence from alcohol or drugs; and

(10) the payment of disciplinary costs.

(c) Administration. The Administrator shall be responsible for the supervision of attorneys placed on probation. Where appropriate, the Administrator shall report to the court the probationer's failure to comply with the conditions of probation and may request that the court

modify the conditions, extend the probation, or issue a rule to show cause why the probation should not be revoked and the stay of suspension vacated. The Administrator shall serve upon the probationer in any manner authorized by Rule 11 any report filed pursuant to this paragraph. Upon a showing of failure to comply with the conditions of probation, the court shall issue a rule to show cause why probation should not be revoked and the stay of suspension vacated. The Administrator shall serve the rule upon the probationer:

(1) by personal service;

(2) by any manner agreed upon by the parties; or

(3) if, on due inquiry, the probationer cannot be found or is concealed so that the rule cannot be served upon the probationer, by ordinary mail, postage fully prepaid, directed to the probationer (i) at the address listed on the most recent Master Roll, as defined in Rule 756, and to any other last known business or residence address or, (ii) if the probationer is not listed on the Master Roll, at any address last designated by the probationer on the Master Roll or in the equivalent of the Master Roll in any jurisdiction, as defined in Rule 763, in which the probationer is or was licensed to practice law and at his or her last known business or residence address. The Administrator's certificate of mailing or delivery is sufficient proof of service.

Adopted August 9, 1983, effective October 1, 1983; amended June 29, 1999, effective November 1, 1999; amended Dec. 28, 2017, eff. Feb. 1, 2018.

Rule 773. Costs

(a) Costs Defined. Costs may include the following expenses reasonably and necessarily incurred by the administrator in connection with the matter: witness fees; travel expenses of witnesses; bank charges for producing records; expenses incurred in the physical or mental examination of a respondent attorney; fees of expert witnesses; and court reporting expenses except the cost of transcripts of proceedings before the Hearing Board or Review Board where the Administrator takes exception to the findings and recommendation of the Hearing Board or Review Board, unless the Administrator prevails, at least in part, before the reviewing board or this court, in which case the Administrator may include the transcript costs in the statement of costs subject to the limitations of section (c) of this rule.

(b) Duty of Respondent. It is the duty of a respondent to reimburse the Commission for costs not to exceed $1500 and for such additional amounts as the court may order on the motion of the Administrator for good cause shown, which may include (1) costs incurred in the investigation, hearing and review of matters brought pursuant to article VII of these rules which result in the imposition of discipline, (2) costs involved in the investigation of alleged violations of the terms and conditions of any such disciplinary order, when such violations are later proved, (3) costs involved in any proceedings for the enforcement of any rule, judgment or order of this court which was made necessary by any act or omission on the part of the respondent, (4) costs incurred to compel the appearance of respondent and to transcribe respondent's testimony when the appearance followed respondent's failure to comply with a request from the Inquiry Board or

Administrator to provide information concerning a matter under investigation, and (5) costs incurred to obtain copies of records from a financial institution, when the institution's production of the records followed respondent's failure to comply with a request from the Inquiry Board or the Administrator to provide those records.

(c) Statement of Costs. After the imposition of discipline by the court, the Administrator shall prepare an itemized statement of costs, not to exceed $1500, which shall be made a part of the record. The Administrator shall serve a copy of the statement on the respondent in any manner authorized by Rule 11. The Administrator may petition the court for costs reasonably and necessarily incurred by the Administrator in excess of $1500, which may be allowed for good cause shown. Costs up to $1500 shall be paid by the respondent within 30 days of service of the statement. Costs in excess of $1500 shall be paid by the respondent within 30 days of the order allowing the petition for excess costs.

(d) Assessment of Costs. If the respondent contests the amount of the costs or fails to pay the costs within 30 days of service of the statement or order allowing excess costs, the Administrator may petition the court for an order and judgment assessing costs against the respondent and directing the respondent to pay the costs, in full or in part, to the Commission. The Administrator shall serve the petition on the respondent in any manner authorized by Rule 11. Costs shall be paid by the respondent attorney within 30 days after the entry of the order and judgment assessing costs. Proceedings for the collection of costs assessed against the respondent attorney may be initiated by the Administrator on the order and judgment entered by the court. A petition for reinstatement pursuant to Rule 767 must be accompanied by a receipt verifying payment of any costs imposed in connection with prior disciplinary proceedings involving the petitioner.

JUSTICE McMORROW dissents from this October 5, 2000, amendment of Rule 773.

Adopted August 9, 1983, effective October 1, 1983; amended June 1, 1984, effective July 1, 1984; amended February 21, 1986, effective August 1, 1986; amended October 13, 1989, effective immediately; amended October 5, 2000, effective November 1, 2000; amended June 22, 2017, eff. July 1, 2017; amended Dec. 28, 2017, eff. Feb. 1, 2018; amended May 23, 2019, eff. July 1, 2019.

Rule 774. Interim Suspension

(a) Grounds for Suspension. During the pendency of a criminal indictment, criminal information, disciplinary proceeding or disciplinary investigation, the court on its own motion, or on the Administrator's petition for a rule to show cause, may suspend an attorney from the practice of law until further order of the court. The petition shall allege:

(1) the attorney has been formally charged with the commission of a crime which involves moral turpitude or reflects adversely upon his fitness to practice law, and there appears to be persuasive evidence to support the charge; or

(2) a complaint has been voted by the Inquiry Board; the attorney has committed a violation of the Rules of Professional Conduct which involves fraud or moral turpitude or

threatens irreparable injury to the public, his or her clients, or to the orderly administration of justice; and there appears to be persuasive evidence to support the charge.

(b) Form and Service of Petition. The petition shall be verified or supported by affidavit or other evidence and shall be filed with the clerk. The petition shall be served upon the attorney in any manner in which service of process is authorized by Rule 756(a).

(c) Procedure. Upon receipt of the petition, the court may issue a rule to show cause why the attorney should not be suspended from the practice of law until the further order of the court. The Administrator shall serve the rule upon the attorney:

(1) by personal service;

(2) by any manner agreed upon by the parties;

(3) if, on due inquiry, the attorney cannot be found or is concealed so that the rule cannot be served upon the attorney, by ordinary mail, postage fully prepaid, directed to the attorney (i) at the address listed on the most recent Master Roll, as defined in Rule 756, and to any other last known business or residence address or, (ii) if the attorney is not listed on the Master Roll, at any address last designated by the attorney on the Master Roll or in the equivalent of the Master Roll in any jurisdiction, as defined in Rule 763, in which the attorney is or was licensed to practice law, and at his or her last known business or residence address. The Administrator's certificate of mailing or delivery is sufficient proof of service; or

(4) by the attorney or counsel for the attorney filing with the court a statement accepting service of the rule to show cause, in which case no proof of service shall be required.

After consideration of the petition and any answer to the rule to show cause, the court may enter an order, effective immediately, suspending the attorney from the practice of law until the further order of the court.

(d) Suspension Order and Conditions of Suspension. The court may make such orders and impose such conditions of the interim suspension as it deems necessary to protect the interests of the public and the orderly administration of justice, including but not limited to:

(1) notification to clients of the respondent's interim suspension;

(2) audit of the respondent's books, records, and accounts;

(3) appointment of a trustee to manage respondent's affairs; and

(4) physical and mental examination of the respondent.

Adopted June 1, 1984, effective July 1, 1984; amended March 25, 1991, effective immediately; amended Dec. 28, 2017, eff. Feb. 1, 2018.

Rule 775. Immunity

Any person who submits a claim to the Client Protection Program or who communicates a complaint concerning an attorney or allegations regarding the unauthorized practice of law to the Attorney Registration and Disciplinary Commission, or its administrators, staff, investigators or any member of its boards, shall be immune from all civil liability which, except for this rule, might

result from such communications or complaint. The grant of immunity provided by this rule shall apply only to those communications made by such persons to the Attorney Registration and Disciplinary Commission, its administrators, staff, investigators and members of its boards.

Adopted October 13, 1989, effective immediately; amended March 28, 1994, effective immediately; amended December 7, 2011, effective immediately.

Rule 776. Appointment of Receiver in Certain Cases

(a) Appointment of Receiver. Where it comes to the attention of the circuit court in any judicial circuit from any source that a lawyer in the circuit is unable properly to discharge his or her responsibilities to his or her clients due to disability, disappearance or death, and that no partner, associate, executor or other responsible party capable of conducting the lawyer's affairs is known to exist, then, upon such showing, the presiding judge in the judicial circuit in which the lawyer maintained his or her practice, or the Supreme Court, may appoint an attorney from the same judicial circuit to serve as a receiver to perform certain duties hereafter enumerated. Notice of such appointment shall be made promptly to the Administrator of the Attorney Registration and Disciplinary Commission either at his Chicago or Springfield office, as appropriate. A copy of said notice shall be served on the affected attorney, or on his or her personal representative, guardian of the estate, or court-appointed representative in any manner in which service of process is authorized by Rule 765(a).

(b) Duties of the Receiver. As expeditiously as possible, the receiver shall take custody of and make an inventory of the lawyer's files, notify the lawyer's clients in all pending cases as to the lawyer's disability, or inability to continue legal representation, and recommend prompt substitution of attorneys, take appropriate steps to sequester client funds of the lawyer, and to take whatever other action is indicated to protect the interests of the attorney, his or her clients, or other affected parties. A copy of the appointing order shall be served on the affected attorney at his or her last known residence address.

(1) The attorney appointed to serve as receiver shall be designated from among members of the bar from the same judicial circuit who are not representing any party who is adverse to any known client of the disabled, absent or deceased lawyer, and who have no adverse interest or relationship with that lawyer or his or her estate which would affect the receiver's ability to perform the duties above enumerated.

(2) An attorney appointed as receiver may decline the appointment for personal or professional reasons. If no available members of the bar from the same judicial circuit can properly serve as receiver as a result of personal or professional obligations, the Administrator of the Attorney Registration and Disciplinary Commission shall be appointed to serve as receiver.

(3) Any objections by or on behalf of the disabled, absent, or deceased lawyer, or any other interested party to the appointment of or conduct by the receiver shall be raised and heard in the appointing court prior to or during the pendency of the receivership.

(c) Effect of Appointment of Receiver. Where appropriate, a receiver appointed by the court pursuant to this rule may file a motion with the court for a stay of any applicable statute of limitation, or limitation on time for appeal, or to vacate or obtain relief from any judgment, for a period not to exceed 60 days. A motion setting forth reasons for such stay shall constitute a pleading sufficient to toll any limitations period. For good cause shown, such stay may be extended for an additional 30 days.

(d) Liability of Receiver. A receiver appointed pursuant to this rule shall:

(1) not be regarded as having an attorney-client relationship with the clients of the disabled, absent, or deceased lawyer, except that the receiver shall be bound by the obligations of confidentiality imposed by the Rules of Professional Conduct with respect to information acquired as receiver;

(2) have no liability to the clients of the disabled, absent or deceased lawyer except for injury to such clients caused by intentional, willful, or gross neglect of duties as receiver; and

(3) except as herein provided, be immune to separate suit brought by or on behalf of the disabled, absent, or deceased lawyer.

(e) Compensation of the Receiver.

(1) The receiver shall normally serve without compensation.

(2) On motion by the receiver, with notice to the Administrator of the Attorney Registration and Disciplinary Commission, and upon showing by the receiver that the nature of the receivership was extraordinary and that failure to award compensation would work substantial hardship on the receiver, the court may award reasonable compensation to the receiver to be paid out of the Disciplinary Fund, or any other fund that may be designated by the Supreme Court. In such event, compensation shall be awarded only to the extent that the efforts of the receiver have exceeded those normally required in an amount to be determined by the court.

(f) Termination of Receivership. Upon completion of the receiver's duties as above enumerated, he or she shall file with the appointing court a final report with a copy thereof served upon the Administrator of the Attorney Registration and Disciplinary Commission.

Adopted October 20, 1989, effective November 1, 1989; amended March 25, 1991, effective immediately; amended June 22, 2017, eff. July 1, 2017; amended Dec. 28, 2017, eff. Feb. 1, 2018.

Rule 777. Registration of, and Disciplinary Proceedings Relating to, Foreign Legal Consultants

(a) Supervision and Control of Foreign Legal Consultants. The registration of, and disciplinary proceedings affecting, persons who are licensed (pursuant to Rule 712) to practice as foreign legal consultants shall be subject to the supreme court rules (Rule 751 *et seq.*) and to the rules of the Attorney Registration and Disciplinary Commission relating to the registration and discipline of attorneys. As used in those rules, the terms "attorney" and "attorney and counselor at law" shall include foreign legal consultants except to the extent that those rules concern matters

unrelated to the permissible activities of foreign legal consultants.

(b) Issuance of Subpoenas by Clerk Relating to Investigation of Foreign Legal Consultants. Upon application by the Administrator or an Inquiry Board, disclosing that the Administrator or Inquiry Board is conducting an investigation of either professional misconduct on the part of a foreign legal consultant or the unlawful practice of law by a foreign legal consultant, or of a Hearing Board that it is conducting a hearing relating thereto, or upon application by a respondent, the clerk of this court shall be empowered to issue subpoenas for the attendance of witnesses and the production of books and documents before the Administrator or Inquiry Board or Hearing Board.

(c) Issuance of Subpoenas by Clerk Relating to Investigation of Wrongfully Representing Himself as a Foreign Legal Consultant. Upon application by the Administrator or an Inquiry Board disclosing that it has reason to believe that a person, firm or corporation other than a foreign legal consultant is unlawfully practicing or assuming to practice law as a foreign legal consultant and that it is conducting an investigation thereof, or of a Hearing Board that it is conducting a hearing relating thereto, or upon application by any respondent, the clerk of this court shall be empowered to issue subpoenas for the attendance of witnesses and production of books and documents before the Administrator or Inquiry Board or Hearing Board.

(d) Taking Evidence. The Administrator or Inquiry Board conducting an investigation and any Hearing Board conducting a hearing pursuant to this rule is empowered to take and transcribe the evidence of witnesses, who shall be sworn by any person authorized by law to administer oaths.

(e) Disciplinary Procedure. Disciplinary proceedings and proceedings under Rules 757, 758, or 759 against any foreign legal consultant shall be initiated and conducted in the manner and by the same agencies as prescribed by law for such proceedings against those admitted as attorneys.

Adopted December 7, 1990, effective immediately; amended December 16, 2010, effective immediately; amended June 22, 2017, eff. July 1, 2017.

Rule 778. Retention of Records by Administrator

(a) Retention of Records. The Administrator is permitted to retain the record of investigation for all matters resulting in the imposition of discipline as defined by Rule 770 , for investigations which have been stayed or deferred by the transfer of the attorney to disability inactive status, or for investigations that have resulted in the filing of unauthorized practice of law proceedings.

(b) Expungement. The Administrator shall expunge the record of an investigation concluded by dismissal or closure by the Administrator or Inquiry Board three years after the disposition of the investigation, unless deferral of expunction is warranted under paragraph (c). Expungement shall consist of the Administrator's destruction of the investigative file and other related materials maintained by the Administrator relating to the attorney, including any computer record identifying the attorney as a subject of an investigation.

(c) Deferral of Expungement of Investigative Materials. Expungement of an investigative file and all related materials under paragraph (b) shall be deferred until the passage of three years

from the later of the following events:

(1) the conclusion of any pending disciplinary or disability proceeding related to the attorney before the Hearing or Review Boards or the Court; or

(2) the termination of any previously imposed sanction (including suspension, disbarment or probation) or the restoration of the attorney from disability inactive to active status; or

(3) the termination of any permanent retirement status related to the attorney.

Adopted January 5, 1993, effective immediately; amended June 29, 1999, effective November 1, 1999; amended December 16, 2010, effective immediately; amended December 7, 2011, effective immediately; amended June 5, 2012, eff. immediately.

Rule 779. Unauthorized Practice of Law Proceedings

(a) Proceedings against Suspended Illinois Lawyers and Out of State Lawyers. Unauthorized practice of law proceedings authorized by the Inquiry Board against an Illinois attorney who is suspended or against a lawyer licensed in another jurisdiction in the United States shall be instituted by the Administrator by the filing of a disciplinary complaint before the Hearing Board, and the hearing and review procedure shall be governed by Rule 753.

(b) Proceedings Against Disbarred Illinois Lawyers and Unlicensed Persons. Unauthorized practice of law proceedings authorized by the Inquiry Board against an Illinois attorney who is disbarred or disbarred on consent or against a person, entity or association that is not licensed to practice law in any other United States' jurisdiction may be brought by the Administrator as civil and/or contempt actions pursuant to the rules of this court, its inherent authority over the practice of law, or other laws of the State related to the unauthorized practice of law. Proceedings shall be commenced in the circuit court for the circuit in which venue would be proper under the Code of Civil Procedure (735 ILCS 5/2-101 *et seq.*), unless venue is fixed by a specific law governing the proceedings, in which case that venue provision controls. The circuit court is authorized to enter a final judgment disposing of the case. Appeals from that judgment are governed by Rule 301 of this court.

Adopted December 7, 2011, effective immediately.

Rule 780. Client Protection Program

(a) There is established under the auspices of the Attorney Registration and Disciplinary Commission a Client Protection Program to reimburse claimants from the Client Protection Program Trust Fund for losses:

(1) caused by dishonest conduct committed by lawyers admitted to practice law in the State of Illinois; or

(2) involving unearned, unrefunded fees paid to lawyers admitted to practice law in the State of Illinois who later died or were transferred to disability inactive status.

(b) The purpose of the Client Protection Program is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses, as defined in Rule 780(a), occurring in the course of a lawyer-client or fiduciary relationship between the lawyer and the claimant.

(c) Reimbursements of losses by the Program shall be within the sole discretion of the Commission, and not a matter of right. No person shall have a right in the Program as a third- party beneficiary or otherwise, either before or after the allowance of a claim. The determination of the Commission shall be final and shall not be subject to judicial review.

(d) The Client Protection Program shall be funded by an annual assessment as provided in rule 756. The Commission shall establish by rule the maximum amount which any one claimant may recover from the Program and may establish the aggregate maximum which may be recovered because of the conduct of any one lawyer.

(e) A lawyer who is the subject of a claim that results in reimbursement to a claimant shall be liable to the Program for restitution. Disciplinary orders imposing suspension or probation shall include a provision requiring the disciplined lawyer to reimburse the Client Protection Program Trust Fund for any payments arising from his or her conduct prior to the termination of the period of suspension or probation. Prior to filing a petition for reinstatement or restoration to active practice, a petitioner shall reimburse the Client Protection Program Trust Fund for all payments arising from petitioner's conduct. The petition must be accompanied by a statement from the Administrator indicating that all such payments have been made.

(f) The Commission may make rules related to the investigation and consideration of a Client Protection Program claim.

Adopted March 28, 1994, effective immediately; amended September 14, 2006, effective immediately; amended February 9, 2015, eff. immediately.

Rules 781-89. Reserved

Part C. Minimum Continuing Legal Education

Preamble

The public contemplates that attorneys will maintain certain standards of professional competence throughout their careers in the practice of law. The following rules regarding Minimum Continuing Legal Education are intended to assure that those attorneys licensed to practice law in Illinois remain current regarding the requisite knowledge and skills necessary to fulfill the professional responsibilities and obligations of their respective practices and thereby improve the standards of the profession in general.

Rule 790. Title and Purpose

These rules shall be known as the Minimum Continuing Legal Education Rules ("Rules"). The

purpose of the Rules is to establish a program for Minimum Continuing Legal Education ("MCLE"), which shall operate as an arm of the Supreme Court of Illinois.

Adopted September 29, 2005; effective immediately.

Rule 791. Persons Subject to MCLE Requirements

(a) Scope and Exemptions

These Rules shall apply to every attorney admitted to practice law in the State of Illinois, except for the following persons, who shall be exempt from the Rules' requirements:

(1) All attorneys on inactive or retirement status pursuant to Supreme Court Rule 756(a)(5) or (a)(6), respectively, or on inactive status pursuant to the former Supreme Court Rule 770 or who have previously been placed on voluntarily removed status by the Attorney Registration and Disciplinary Commission ("ARDC");

(2) All attorneys on disability inactive status pursuant to Supreme Court Rules 757 or 758;

(3) All attorneys serving in the office of justice, judge, associate judge, or magistrate of any federal or state court;

(4) All attorneys serving in the office of judicial law clerk, administrative assistant, secretary, or assistant secretary to a justice, judge, associate judge or magistrate of any federal court or any court of the State of Illinois, or in any other office included within the Supreme Court budget that assists the Supreme Court in its adjudicative responsibilities, provided that the exemption applies only if the attorney is prohibited by the terms of his or her employment from actively engaging in the practice of law and is registered with the ARDC pursuant to Supreme Court Rule 756(a)(3)(B);

(5) All attorneys licensed to practice law in Illinois who are on active duty in the Armed Forces of the United States, until their release from active military service and their return to the active practice of law;

(6) An attorney otherwise subject to this rule is entitled to an exemption if the attorney meets all of these criteria:

(i) the attorney is a member of the bar of another state which has a comparable minimum continuing legal education requirement or is licensed to practice law under a limited license issued by another state which has a comparable minimum continuing legal education requirement;

(ii) the individual attorney's only or primary office is in that other state or, if the attorney has no office, the individual attorney's only or primary residence is in that state;

(iii)the attorney is required by that state to complete credits to be in compliance with the continuing legal education requirements established by court rule or legislation in that state; and

(iv)the attorney has appropriate proof that he or she is in full compliance with the continuing legal education requirements established by court rule or legislation in that

state; and

(7) In rare cases, upon a clear showing of good cause, the Minimum Continuing Legal Education Board ("Board") may grant a temporary exemption to an attorney from the Minimum Continuing Legal Education ("MCLE") requirements, or an extension of time in which to satisfy them. Good cause for an exemption or extension may exist in the event of illness, financial hardship, or other extraordinary or extenuating circumstances beyond the control of the attorney. Attorneys denied a temporary exemption or extension may request reconsideration of the initial decision made by the Director of MCLE ("Director") by filing a request in a form approved by the Board (or a substantially similar form) no later than 30 days after the Director's initial decision. The Director shall decide the request for reconsideration within 30 days of its receipt, and promptly notify the attorney. If the Director denies the request, the attorney shall have 30 days from the date of that denial to submit an appeal to the full Board for consideration at its next scheduled Board meeting. Submission of a request for reconsideration or an appeal does not stay any MCLE compliance deadlines or MCLE fee payments.

(b) Full Exemptions

An attorney shall be exempt from these Rules for an entire reporting period applicable to that attorney, if:

(1) The attorney is exempt from these Rules pursuant to paragraphs (a)(1), (a)(2), (a)(3), (a)(4),(a)(5), or (a)(6), on the last day of that reporting period;

(2) For the two-year periods ending June 30, 2019, and June 30, 2020, the attorney is exempt from these Rules pursuant to paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6), for at least 365 days of that reporting period. For all other reporting periods, the attorney is exempt from these Rules pursuant to paragraph (a)(6) for at least 365 days of that reporting period;

(3) The attorney is exempt from these Rules pursuant to paragraphs (a)(3), (a)(4), or (a)(5) for at least one day of the reporting period; or

(4) The attorney receives a temporary exemption from the Board pursuant to paragraph (a)(7), for that reporting period.

(c) Partial Exemptions

For the reporting periods ending June 30, 2019, and June 30, 2020, an attorney who is exempt from these Rules under paragraphs (a)(1), (a)(2), or (a)(6) for more than 60, but less than 365, days of a two-year reporting period, and who is not exempt for the entire reporting period pursuant to paragraph (b), shall be required to earn one-half of the CLE activity hours that would otherwise be required pursuant to Rule 794(a) and (d). In all subsequent reporting periods, there are no partial exemptions from the MCLE requirements.

(d) Nonexemptions

Beginning with the reporting periods ending June 30, 2021, and June 30, 2022, an attorney who is not exempt for the entire reporting period pursuant to paragraph (b) shall be required to

earn all of the CLE activity hours required pursuant to Rule 794(a) and (d).

(e) Resuming Active Status

(1) An attorney who was on inactive, retirement, or disability inactive status pursuant to Supreme Court Rules 756(a)(5) or (a)(6), 757, or 758 or on inactive status pursuant to the former Supreme Court Rule 770 or who was previously placed on voluntarily removed status by the ARDC shall, upon return to active status, be required to complete the CLE credit required for the reporting period in which the attorney returns to active status unless the attorney is otherwise fully exempt from those requirements pursuant to paragraph (b).

(2) An attorney who is exempt pursuant to paragraph (b)(1) for two consecutive reporting periods due to inactive, retirement, or disability status but who also was on active status in both reporting periods must complete 60 total hours of credit, including at least 12 hours of professional responsibility if that attorney subsequently returns his or her license to active status in the third reporting period. Included in the 12 hours of professional credit must be at least 2 hours in the area of diversity and inclusion and at least 2 hours in the area of mental health and substance abuse. The credits must be completed within 365 days of the attorney returning to active status in the third reporting period, and they must be completed even if the attorney returns his or her license to inactive, retirement, or disability inactive status. These 60 total hours of credit are in addition to any credits that may need to be completed for that third reporting period.

If the attorney does not earn the required credits and report their compliance no later than 365 days after returning to active status in the third reporting period, the attorney shall pay a late fee, in an amount as set by the Board in the Court-approved fee schedule, and the attorney shall be referred to the ARDC pursuant to Rule 796(e).

(f) Attorneys on Discipline Status

Paragraphs (f)(1) and (2) shall apply to attorneys on discipline status for reporting periods ending June 30, 2012, and thereafter.

(1) Discipline Imposed Pursuant to Rule 770(a), (b), (c) and (e)

(i) An attorney whose discipline is imposed pursuant to Rule 770(a), (b), (c) and (e) is not required to comply with the MCLE requirements for any reporting period in which the discipline is in effect.

(ii) If the attorney is reinstated to the master roll by order of the Supreme Court ("Court"), the attorney must thereafter earn no less than 30 hours of MCLE credit and no more than 90 hours of MCLE credit which will be set by the MCLE Board based on the length of the attorney's discipline and whether credits need to be earned for the current reporting period. Those MCLE credits shall be earned and reported to the MCLE Board no later than 365 days after entry of the order reinstating the attorney to the master roll. The attorney shall contact the MCLE Board promptly after entry of the order reinstating the attorney to the master roll to establish the number of credits that need to be earned by the attorney. The attorney may apply any MCLE credits earned while the discipline imposed pursuant to Rule 770(a), (b), (c) or (e) was in effect. If the attorney does not earn the needed credits and report no later than 365 days after entry of the order reinstating the attorney to

the master roll, the attorney shall pay a late fee, in an amount as set by the Board in the Court-approved fee schedule, and the attorney shall be referred to the ARDC pursuant to Rule 796(e). A reinstated attorney then needs to comply with the MCLE requirements for the two-year reporting period that begins after the attorney's reinstatement and all reporting periods thereafter.

(2) Discipline Pursuant to Rule 770(d), (f), (g) and (h)

An attorney whose discipline is imposed pursuant to Rule 770(d), (f), (g) and (h) is required to comply with the MCLE requirements for all reporting periods in which the discipline is in effect.

(g) Foreign Legal Consultants

Beginning with the reporting period ending June 30, 2012 and thereafter, the MCLE Rules do not apply to foreign legal consultants licensed under Rule 712.

Adopted September 29, 2005, effective immediately; amended December 6, 2005, effective immediately; amended February 10, 2006, effective immediately; amended September 27, 2011, effective immediately; amended December 7, 2011, effective immediately; amended June 5, 2012, eff. immediately; amended Jan. 29, 2019, eff. Mar. 1, 2019.

Rule 792. The MCLE Board

(a) Administration

The administration of the program for MCLE shall be under the supervision of the Minimum Continuing Legal Education Board ("Board").

(b) Selection of Members; Qualifications; Terms

(1) The Board shall consist of nine members, appointed by the Supreme Court ("Court"). At least one member may be a nonattorney and at least one member shall be a circuit court judge. The Executive Director of the Supreme Court Commission on Professionalism and the Administrator of the Attorney Registration and Disciplinary Commission shall serve as *ex-officio* members in addition to the nine members appointed by the Court but shall have no vote.

(2) To be eligible for appointment to the Board, an attorney must have actively practiced law in Illinois for a minimum of 10 years.

(3) Three members, including the chairperson, shall initially be appointed to a three-year term. Three members shall be appointed to an initial two-year term, and three members shall be appointed to an initial one-year term. Thereafter, all members shall be appointed or re-appointed to three-year terms.

(4) Board members shall be limited to serving three consecutive three-year terms.

(5) No individual may be appointed to the Board who stands to gain financially, directly or indirectly, from accreditation or other decisions made by the Board.

(6) Any member of the Board may be removed by the Court at any time, without cause.

(7) Should a vacancy occur, the Court shall appoint a replacement to serve for the

unexpired term of the member.

(8) Board members shall serve without compensation, but shall be reimbursed for reasonable and necessary expenses incurred in performing their official duties, including reasonable travel costs to and from Board meetings.

(9) The chairperson and vice-chairperson shall be designated by the Court. Other officers shall be elected by the members of the Board at the first meeting of each year.

(c) Powers and Duties

The Board shall have the following powers and duties:

(1) To recommend to the Court rules and regulations for MCLE not inconsistent with the rules of the Court and these Rules, including fees sufficient to ensure that the MCLE program is financially self-supporting; to implement MCLE rules and regulations adopted by the Court; and to adopt forms necessary to insure attorneys' compliance with the rules and regulations.

(2) To meet at least twice a year, or more frequently as needed, either in person, by conference telephone communications, or by electronic means. Six members of the Board shall constitute a quorum for the transaction of business. A majority of the quorum present shall be required for any official action taken by the Board.

(3) To accredit commercial and noncommercial continuing legal education ("CLE") courses and activities, and to determine the number of hours to be awarded for attending such courses or participating in such activities.

(4) To review applications for accreditation of those courses, activities or portions of either that are offered to fulfill the professional responsibility requirement in Rule 794(d)(1) for conformity with the accreditation standards and hours enumerated in Rule 795, exclusive of review as to substantive content. Those courses and activities determined to be in conformance shall be referred to the Supreme Court Commission on Professionalism for substantive review and approval as provided in Rules 799(c)(5) and (d)(6)(i). Professional responsibility courses or activities approved by both the Commission on Professionalism and the MCLE Board as specified in this subsection shall be eligible for accreditation by the MCLE Board.

(5) To submit an annual report to the Court evaluating the effectiveness of the MCLE Rules and the quality of the CLE courses, and presenting the Board's recommendations, if any, for changes in the Rules or their implementation, a financial report for the previous fiscal year, and its recommendations for the new fiscal year. There shall be an independent annual audit of the MCLE fund as directed by the Court, the expenses of which shall be paid out of the fund. The audit shall be submitted as part of the annual report to the Court.

(6) To coordinate its administrative responsibilities with the Attorney Registration and Disciplinary Commission ("ARDC"), and to reimburse expenses incurred by the ARDC attributable to enforcement of MCLE requirements.

(7) To take all action reasonably necessary to implement, administer and enforce these rules and the decisions of the MCLE Director, staff and Board.

(8) To establish policies and procedures for notification and reimbursement of course fees,

if appropriate, in those instances where course accreditation is withheld or withdrawn.

(d) Administration

The Board shall appoint, with the approval of the Supreme Court, a Director of MCLE ("Director") to serve as the principal executive officer of the MCLE program. The Director, with the Board's authorization, will hire sufficient staff to administer the program. The Board will delegate to the Director and staff authority to conduct the business of the Board within the scope of this Rule, subject to review by the Board. The Director and staff shall be authorized to acquire or rent physical space, computer hardware and software systems and other items and services necessary to the administration of the MCLE program.

(e) Funding

The MCLE program shall initially be funded in a manner to be determined by the Court. Thereafter, funding shall be derived solely from the fees charged to CLE providers and from late fees and reinstatement fees assessed to individual attorneys. This schedule of CLE provider fees, late fees, and reinstatement fees must be approved by the Court, and any reference in these Rules to a fee assessed or set by the Board means a fee based on the Court-approved fee schedule. The Board may elect to charge fees up to the amount approved by the Court and the Board may, as it deems appropriate, charge fees less than the amount approved by the Court.

Adopted September 29, 2005, effective immediately; amended December 6, 2005, effective immediately; amended June 5, 2007, effective immediately; amended November 23, 2009, effective December 1, 2009; amended September 27, 2011, effective immediately; amended Jan. 17, 2013, eff. immediately; amended Nov. 19, 2015, eff. immediately.

Rule 793. Requirement for Newly-Admitted Attorneys

(a) Scope

Except as specified in paragraph (f), every Illinois attorney admitted to practice on or after October 1, 2011, must complete the requirement for newly-admitted attorneys described in paragraph (c).

(b) Completion Deadline

The requirements established in paragraphs (c), (f) and (h) must be completed by the last day of the month that occurs one year after the newly-admitted attorney's admission to practice in Illinois.

(c) Elements of the Requirement for Newly-Admitted Attorneys

The requirement for newly-admitted attorneys includes three elements:

(1) A Basic Skills Course of no less than six hours covering topics such as practice techniques and procedures under the Illinois Rules of Professional Conduct, client communications, use of trust accounts, attorneys' other obligations under the Court's Rules, required record keeping, professional responsibility topics (which may include professionalism, diversity and inclusion, mental health and substance abuse, and civility) and

may cover other rudimentary elements of practice. The Basic Skills Course must include at least six hours approved for professional responsibility credit. An attorney may satisfy this requirement by participating in a mentoring program approved by the Commission on Professionalism pursuant to Rule 795(d)(11); and

(2) At least nine additional hours of MCLE credit. These nine hours may include any number of hours approved for professional responsibility credit;

(3) Reporting to the MCLE Board as required by Rule 796.

(d) Exemption From Other Requirements

During this period, the newly-admitted lawyer shall be exempt from the other MCLE requirements, including Rule 794(d)(2). A newly-admitted attorney may earn carryover credit as established by Rule 794(c)(2).

(e) Initial Reporting Period

The newly admitted attorney's initial two-year reporting period for complying with the MCLE requirements contained in Rule 794 shall commence, following the deadline for the attorney to complete the newly-admitted attorney requirement, on the next July 1 of an even-numbered year for lawyers whose last names begin with a letter A through M, and on the next July 1 of an odd-numbered year for lawyers whose last names begin with a letter N through Z.

(f) Prior Practice

(1) Attorneys admitted to the Illinois bar before October 1, 2011

The newly-admitted attorney requirements of Rule 793(c) do not apply to attorneys who are admitted in Illinois before October 1, 2011, and after practicing law in other states for a period of one year or more. Attorneys shall report this prior practice exemption to the MCLE Board under Rule 796. Thereafter, such attorneys will be subject to MCLE requirements under the appropriate schedule for each attorney.

(2) Attorneys admitted to the Illinois bar on October 1, 2011, and thereafter

The newly-admitted attorney requirements of Rule 793(c) do not apply to attorneys who: (i) were admitted in Illinois on October 1, 2011, and thereafter; and (ii) were admitted in Illinois after practicing law in other states for a period of at least one year in the three years immediately preceding admission in Illinois. Instead, such attorneys must complete 15 hours of MCLE credit (including four hours of professional responsibility credits) within one year of the attorney's admission to practice in Illinois. Such attorneys shall report compliance with this requirement to the MCLE Board under Rule 796. Thereafter, such attorneys will be subject to the MCLE requirements under the appropriate schedule for each attorney.

(g) Approval

The Basic Skills Course shall be offered by CLE providers, including "in-house" program providers, authorized by the MCLE Board after its approval of the provider's planned curriculum and after approval by the Commission on Professionalism of the professional responsibility credit. Courses shall be offered throughout the state and at reasonable cost.

(h) Applicability to Attorneys Admitted after December 31, 2005, and before October 1,

2011

Attorneys admitted to practice after December 31, 2005, and before October 1, 2011, have the option of completing a Basic Skills Course totaling at least 15 actual hours of instruction as detailed under the prior Rule 793(c) or of satisfying the requirements of paragraph (c).

Adopted September 29, 2005, effective immediately; amended September 27, 2011, effective immediately; amended May 23, 2017, eff. July 1, 2017; amended June 22, 2017, eff. July 1, 2017.

Rule 794. Continuing Legal Education Requirement

(a) Hours Required

Except as provided by Rules 791 or 793, every Illinois attorney subject to these Rules shall be required to complete 20 hours of CLE activity during the initial two-year reporting period (as determined on the basis of the lawyer's last name pursuant to paragraph (b), below) ending on June 30 of either 2008 or 2009, 24 hours of CLE activity during the two-year reporting period ending on June 30 of either 2010 or 2011, and 30 hours of CLE activity during all subsequent two-year reporting periods.

(b) Reporting Period

The applicable two-year reporting period shall begin on July 1 of even-numbered years for lawyers whose last names begin with the letters A through M, and on July 1 of odd-numbered years for lawyers whose last names begin with the letters N through Z.

(c) Carryover of Hours

(1) For attorneys with two-year reporting periods

All CLE hours may be earned in one year or split in any manner between the two-year reporting period.

(i) If an attorney earns more than the required CLE hours in the two-year reporting periods of July 1, 2006, through June 30, 2008, or July 1, 2007, through June 30, 2009, the attorney may carry over a maximum of 10 hours earned during that period to the next reporting period, except for professional responsibility credits referred to in paragraph (d).

(ii) If an attorney earns more than the required CLE hours in the two-year reporting periods of July 1, 2008, through June 30, 2010, or July 1, 2009, through June 30, 2011, and all reporting periods thereafter, the attorney may carry over to the next reporting period a maximum of 10 hours, including hours approved for professional responsibility credit. Professional responsibility credit carried over to the next reporting period may be used to meet the professional responsibility requirement of the next reporting period.

(2) For newly-admitted attorneys subject to Rule 793

(i) For an attorney admitted to practice in Illinois on January 1, 2006, through June 30, 2009, such newly-admitted attorney may carry over to his or her first two-year reporting period a maximum of 10 CLE hours (except for professional responsibility credits referred to in paragraph (d)) earned after completing the newly-admitted attorney requirement pursuant to

Rule 793.

(ii) For an attorney admitted to practice in Illinois on July 1, 2009, and thereafter, such newly-admitted attorney may carry over to his or her first two-year reporting period a maximum of 15 CLE hours earned in excess of those required by Rule 793(c) or Rule 793(f)(2) if those excess hours were earned after the attorney's admission to the Illinois bar and before the start of the attorney's first two-year reporting period. Those carryover hours may include up to six hours approved for professional responsibility credit. Professional responsibility credit carried over to the next reporting period may be used to meet the professional responsibility requirement of the next reporting period.

(3) An attorney, other than a newly admitted attorney, may carry over to his or her first two-year reporting period a maximum of 10 CLE activity hours (except for professional responsibility credits referred to in paragraph (d)) earned between January 1, 2006, and the beginning of that period.

(d) Professional Responsibility Requirement

(1) Each attorney subject to these Rules shall complete a minimum of six of the total CLE hours for each two-year reporting period in the area of professionalism, civility, legal ethics, diversity and inclusion, or mental health and substance abuse.

(2) Beginning with the two-year reporting period ending June 30, 2019, these minimum six hours shall include either completing the Rule 795(d)(11) yearlong Lawyer-to-Lawyer Mentoring Program or:

(i) At least one hour in the area of diversity and inclusion and

(ii) At least one hour in the area of mental health and substance abuse.

Adopted September 29, 2005, effective immediately; amended October 1, 2010, effective immediately; amended September 27, 2011, effective immediately; amended Apr. 3, 2017; eff. July 1, 2017.

Rule 795. Accreditation Standards and Hours

(a) Standards

Eligible CLE courses and activities shall satisfy the following standards:

(1) The course or activity must have significant intellectual, educational or practical content, and its primary objective must be to increase each participant's professional competence as an attorney.

(2) The course or activity must deal primarily with matters related to the practice of law.

(3) The course or activity must be offered by a provider having substantial, recent experience in offering CLE or demonstrated ability to organize and effectively present CLE. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction and supervision of the activity.

(4) The course or activity itself must be conducted by an individual or group qualified by practical or academic experience. The course or activity, including the named advertised

participants, must be conducted substantially as planned, subject to emergency withdrawals and alterations.

(5) Thorough, high quality, readable and carefully prepared written materials should be made available to all participants at or before the time the course is presented, unless the absence of such materials is recognized as reasonable and approved by the Board.

(6) Traditional CLE courses or activities shall be conducted in a physical setting conducive to learning and free of interruptions from telephone calls, electronic communications, and other office or personal matters. The activity must be open to observation, without charge, by members of the Board, its staff, or their designees.

(7) The course or activity may be presented using one or more of these delivery methods as approved by the Board: in person or by live or recorded technology methods. Each delivery method must have interactivity as a key component, including the opportunity for participants to ask questions and have them answered by the course faculty or other qualified commentator.

(8) The course or activity must consist of not less than one-half hour of actual instruction, unless the Board determines that a specific program of less than one-half hour warrants accreditation.

(9) For each course or activity, the provider shall submit to the MCLE Board the name, ARDC registration number, and actual CLE hours, including professional responsibility hours, earned by each Illinois-licensed attorney in the manner and at the time specified by the Board. A list of the names of all participants for each course or activity shall be maintained by the provider for a period of at least three years. The provider shall issue a certificate, in written or electronic form, to each participant evincing his or her attendance. Such lists and certificates shall state the actual number of CLE hours, including professional responsibility hours, earned by each attorney at that course or activity.

(b) Accredited CLE Provider

The Board may extend presumptive approval to a provider for all of the CLE courses or activities presented by that provider each year that conform to paragraph (a)'s Standards (1) through (9), upon written application to be an Accredited Continuing Legal Education Provider ("Accredited CLE Provider"). Such accreditation shall constitute prior approval of all CLE courses offered by such providers. However, the Board may withhold accreditation or limit hours for any course found not to meet the standards, and the Board may revoke accreditation for any organization which is found not to comply with standards. The Board shall assess an annual fee, over and above the fees assessed to the provider for each course, for the privilege of being an "Accredited CLE Provider." An Accredited CLE Provider shall submit an annual report to the Board in the manner and at the time specified by the Board.

(c) Accreditation of Individual Courses or Activities

(1) Any provider not included in paragraph (b) desiring advance accreditation of an individual course or other activity shall apply to the Board by submitting a required application form, the course advance accreditation fee set by the Board, and supporting documentation no less than 45 days prior to the date for which the course or activity is scheduled. Documentation

shall include a statement of the provider's intention to comply with the accreditation standards of this Rule, the written materials distributed or to be distributed to participants at the course or activity, if available, or a detailed outline of the proposed course or activity and list of instructors, and such further information as the Board shall request. The Board staff will advise the applicant in writing within 30 days of the receipt of the completed application of its approval or disapproval.

(2) Providers denied approval of a course or activity shall promptly provide written notice of the Board's denial to all attorneys who requested Illinois MCLE credit for the course. Providers denied approval of a course or activity or individual attorneys who have attended such course or activity may request reconsideration of the Board's initial decision by filing a form approved by the Board no later than 30 days after the Board's initial decision. The Director shall consider the request within 30 days of its receipt, and promptly notify the provider and/or the individual attorney. If the Director denies the request, the provider shall have 30 days from the date of that denial to submit an appeal to the Board for consideration at the next scheduled Board meeting. Submission of a request for reconsideration or an appeal does not stay any MCLE submission deadlines or fee payments.

(3) Providers who do not seek prior approval of their course or activity may apply for approval for the course or activity after its presentation by submitting an application provided by MCLE staff, the supporting documentation described above, and the accreditation fee set by the Board.

(4) For each course or activity, the provider shall submit to the MCLE Board the name, ARDC registration number, and actual CLE hours, including professional responsibility hours, earned by each Illinois-licensed attorney in the manner and at the time specified by the Board. A list of the names of participants shall be maintained by the provider for a period of three years. The provider shall issue a certificate, in written or electronic form, to each participant evincing his or her attendance. Such lists and certificates shall state the actual number of CLE hours, including professional responsibility hours, earned by each attorney at that course or activity.

(5) An attorney may apply to the Illinois MCLE Board for accreditation of an individual out-of-state CLE course if the following provisions are satisfied: (i) the attorney participated in the course either in person or via live audio or video conference; (ii) (a) for a course held in person in a state with a comparable MCLE requirement, the course must be approved for MCLE credit by that state; or (b) for a course held in person in a state or the District of Columbia without a comparable MCLE requirement, the course must be approved for MCLE credit by at least one other state with a comparable MCLE requirement; or (c) for a course attended by live audio or video conference, the course must be approved for MCLE credit by at least one other state with a comparable MCLE requirement; and (iii) the course provider has chosen not to seek accreditation of the course for Illinois MCLE credit.

(d) Nontraditional Courses or Activities

In addition to traditional CLE courses, the following courses or activities will receive CLE credit:

(1) “In-House” Programs. Attendance at “in-house” seminars, courses, lectures or other CLE activity presented by law firms, corporate legal departments, governmental agencies or similar entities, either individually or in cooperation with other such entities, subject to the following conditions:

(i) The CLE course or activity must meet the rules and regulations for any other CLE course or activity, as applicable, including submitting applications, attendance, and fees due under the fee schedule.

(ii) No credit will be afforded for discussions relating to the handling of specific cases, or issues relating to the management of a specific law firm, corporate law department, governmental agency or similar entity.

(2) Law School Courses. Attendance at J.D. or graduate level law courses offered by American Bar Association (“ABA”) accredited law schools, subject to the following conditions:

(i) Credit ordinarily is given only for courses taken after admission to practice in Illinois, but the Board may approve giving credit for courses taken prior to admission to practice in Illinois if giving credit will advance CLE objectives.

(ii) Credit towards MCLE requirements shall be for the actual number of class hours attended, but the maximum number of credits that may be earned during any two-year reporting period by attending courses offered by ABA accredited law schools shall be the minimum number of CLE hours required by Rule s 794(a) and (d).

(iii) The attorney must comply with registration procedures of the law school, including the payment of tuition.

(iv)The course need not be taken for law school credit towards a degree; auditing a course is permitted. However, the attorney must comply with all law school rules for attendance, participation and examination, if any, to receive CLE credit.

(v) The law school shall give each attorney a written certification evincing that the attorney has complied with requirements for the course and attended sufficient classes to justify the awarding of course credit if the attorney were taking the course for credit.

(3) Bar Association Meetings. Attendance at bar association or professional organization meetings at which substantive law, matters of practice, professionalism, diversity and inclusion, mental health and substance abuse, civility, or legal ethics are discussed, in a setting conducive to learning and free of interruptions and subject to the requirements for CLE credit defined in paragraphs (a)(1) through (a)(2) above. Meetings may be any length, but an attorney may earn no more than one hour of MCLE credit from a live CLE-eligible presentation at any such meeting. To report attendance, the bar association or professional organization shall submit to the MCLE Board the meeting information, as well as the attorney names, ARDC registration numbers, and actual CLE hours, including professional responsibility hours, earned by each Illinois-licensed attorney, in the manner and at the time specified by the Board. The bar association or professional organization shall maintain a list of the names of all attendees at each meeting for a period of three years and shall issue a certificate, in written or

electronic form, to each participant evincing his or her attendance. Such lists and certificates shall state the actual number of CLE hours, including professional responsibility hours, earned by each attorney at that meeting.

(4) Cross-Disciplinary Programs. Attendance at courses or activities that cross academic lines, such as accounting-tax seminars or medical-legal seminars, may be considered by the Board for full or partial credit. Purely nonlegal subjects, such as personal financial planning, shall not be counted towards CLE credit. Any mixed-audience courses or activities may receive credit only for sessions deemed appropriate for CLE purposes.

(5) Teaching Continuing Legal Education Courses. Teaching at CLE courses or activities during the two-year reporting term, subject to the following:

(i) Credit may be earned for teaching in an approved CLE course or activity. Presentations shall be counted at the full hour or fraction thereof for the initial presentation; a repeat presentation of the same material shall be counted at one-half; no further hours may be earned for additional presentations of the same material.

(ii) Time spent in preparation for a presentation at an approved CLE activity shall be counted at six times the actual presentation time.

(iii)Authorship or coauthorship of written materials for approved CLE activities shall qualify for CLE credit on the basis of actual preparation time, but subject to receiving no more than 10 hours of credit in any two-year reporting period.

(6) Part-Time Teaching of Law Courses. Teaching at an ABA-accredited law school, or teaching a law course at a university, college, or community college, subject to the following:

(i) Teaching credit may be earned for teaching law courses offered for credit toward a degree at a law school accredited by the ABA, but only by lawyers who are not employed full-time by a law school, university, college, or community college. Those full-time teachers at a law school, university, college, or community college who choose to maintain their licenses to practice law are fully subject to the MCLE requirements established herein, and may not earn any credits by their ordinary teaching assignments. Presentations shall be counted at the full hour or fraction thereof for the initial presentation; a repeat presentation of the same material shall be counted at one-half; no further hours may be earned for additional presentations of the same material. Teaching credit may be earned by appearing as a guest instructor, moderator, or participant in a law school class for a presentation which meets the overall guidelines for CLE courses or activities, as well as for serving as a judge at a law school training simulation, including but not limited to moot court arguments, mock trials, mock transactional exercises, and mock arbitrations/mediations. Time spent in preparation for an eligible law school activity shall be counted at three times the actual presentation time. Appearing as a guest speaker before a law school assembly or group shall not count toward CLE credit.

(ii) Teaching credit may be earned for teaching law courses at a university, college, or community college by lawyers who are not full-time teachers if the teaching involves significant intellectual, educational or practical content, such as a civil procedure course

taught to paralegal students or a commercial law course taught to business students. Presentations shall be counted at the full hour or fraction thereof for the initial presentation; a repeat presentation of the same material shall be counted at one-half; no further hours may be earned for additional presentations of the same material.

(7) Legal Scholarship. Writing law books and law review articles, subject to the following:

(i) An attorney may earn credit for legal textbooks, casebooks, treatises and other scholarly legal books written by the attorney that are published during the two-year reporting period.

(ii) An attorney may earn credit for writing law-related articles in responsible legal journals or other legal sources, published during the two-year reporting period, that deal primarily with matters related to the practice of law, professionalism, diversity and inclusion, mental illness and addiction issues, civility, or ethical obligations of attorneys. Republication of any article shall receive no additional CLE credits unless the author made substantial revisions or additions.

(iii)An attorney may earn credit towards MCLE requirements for the actual number of hours spent researching and writing, but the maximum number of credits that may be earned during any two-year reporting period on a single publication shall be one-half the minimum number of CLE hours required by Rule 794(a) and (d). Credit is accrued when the eligible book or article is published, regardless whether the work in question was performed in the then-current two-year reporting period. To receive CLE credit, the attorney shall maintain contemporaneous records evincing the number of hours spent on a publication.

(8) Pro Bono Training. Attendance at courses or activities designed to train lawyers who have agreed to provide pro bono services shall earn CLE credit to the same extent as other courses and seminars.

(9) Bar Review Courses. Attendance at bar review courses before admission to the Illinois Bar shall not be used for CLE credit.

(10) Reading Legal Materials. No credit shall be earned by reading advance sheets, newspapers, law reviews, books, cases, statutes, newsletters or other such sources.

(11) Activity of Lawyer-to-Lawyer Mentoring. Lawyers completing a comprehensive year-long structured mentoring program, as either a mentor or mentee, may earn credit equal to the minimum professional responsibility credit (six hours) during the two-year reporting period of completion, provided that the mentoring plan is preapproved by the Commission on Professionalism, the completion is attested to by both mentor and mentee, and both the mentor and mentee meet the eligibility requirements herein.

(i) Eligibility Requirements:

(A) The mentor has been in practice for a minimum of five years, and the mentee completes the program within the first five years of his or her practice; or

(B) The mentor and mentee are approved to participate in the ARDC Mentoring

Program imposed as a condition of disciplinary sanction or as a condition of a deferral program.

(12) Service on Certain Boards, Commissions, Committees, or Task Forces of the Supreme Court of Illinois. An attorney appointed by the Court to a qualifying Court entity earns one hour of MCLE credit by attending a qualifying meeting of their board, commission, committee, or task force. "A qualifying meeting" is any meeting of that board, commission, committee, or task force, as well as any subcommittee, working group or another subgroup that the Court entity created to advance its work. Credit for this attendance is limited to 12 hours in each two-year reporting period. There is no carryover of these credits to another two-year reporting period.

(e) Credit Hour Guidelines

Hours of CLE credit will be determined under the following guidelines:

(1) Sixty minutes shall equal one hour of credit. Partial credit shall be earned for qualified activities of less than 60 minutes duration.

(2) The following are not counted for credit: (i) coffee breaks; (ii) introductory and closing remarks; (iii) keynote speeches; (iv) lunches and dinners; (v) other breaks; and (vi) business meetings.

(3) Question and answer periods are counted toward credit.

(4) Lectures or panel discussions occurring during breakfast, luncheon, or dinner sessions of bar association committees may be awarded credit.

(5) Credits are determined by the following formula: Total minutes of approved activity *minus* minutes for breaks (as described in paragraph (e)(2)) *divided by* 60 *equals* maximum CLE credit allowed.

(6) Credits merely reflect the maximum that may be earned. Only actual attendance or participation earns credit.

(f) Financial Hardship Policy

The provider shall have available a financial hardship policy for attorneys who wish to attend its courses, but for whom the cost of such courses would be a financial hardship. Such policy may be in the form of scholarships, waivers of course fees, reduced course fees, or discounts. Upon request by the Board, the provider must produce the detailed financial hardship policy. The Board may require, on good cause shown, a provider to set aside without cost, or at reduced cost, a reasonable number of places in the course for those attorneys determined by the Board to have good cause to attend the course for reduced or no cost.

Adopted September 29, 2005, effective immediately; amended October 4, 2007, effective immediately; amended October 12, 2010, effective immediately; amended September 27, 2011; effective immediately; amended Feb. 6, 2013, eff. immediately; amended Nov. 18, 2016, eff. immediately; amended May 23, 2017, eff. July 1, 2017; amended Jan. 29, 2019, eff. July 1, 2019; amended Jan. 24. 2020, eff. immediately; amended May 8, 2020, eff. July 1, 2020; amended Dec. 17, 2021, eff. Jan. 1, 2022.

Rule 796. Enforcement of MCLE Requirements

(a) Reporting Compliance

(1) Notice of Requirement to Submit MCLE Certification

The MCLE Board shall send to attorneys as set forth in (i), (ii) and (iii) below a notice of requirement to submit an MCLE certification ("Initial MCLE Notice"). The attorney's certification shall state whether the attorney complied with these Rules, has not complied with these Rules or is exempt.

(i) Newly-admitted attorney requirement

On or before the first day of the month preceding the end of an attorney's newly-admitted attorney requirement reporting period, the Director shall mail or email to the attorney, at a mailing or email address maintained by the ARDC, an Initial MCLE Notice.

(ii) Two-year reporting period

On or before May 1 of each two-year reporting period, the Director shall mail or email to the attorney, at a mailing or email address maintained by the ARDC, an Initial MCLE notice.

(iii) An Initial MCLE Notice need not be sent to the following:

(A) Attorneys on inactive or retirement status pursuant to Supreme Court Rule 756(a)(5) or (a)(6), respectively, or on inactive status pursuant to the former Supreme Court Rule 770 or who have previously been placed on voluntarily removed status by the ARDC;

(B) Attorneys on disability inactive status pursuant to Supreme Court Rules 757 or 758;

(C) Attorneys known by the Director to be fully exempt from these Rules pursuant to Rule 791(b); or

(D) Attorneys who have already been removed from the master roll of attorneys due to the attorney's failure to comply with the MCLE requirements for two consecutive reporting periods or more.

(2) Every Illinois attorney who is either subject to these Rules or who is sent an MCLE Initial Notice shall submit a certification to the Board, by means of the Board's online reporting system or other means specified by the Director, within 31 days after the end of the attorney's reporting period. It is the responsibility of each attorney on the master roll to notify the ARDC of any change of address or email address. Failure to receive an Initial MCLE Notice shall not constitute an excuse for failure to file the certification.

(b) Failure to Report Compliance

Attorneys who fail to submit an MCLE certification within 31 days after the end of their reporting period, or who file a certification within 31 days after the end of their reporting stating that they have not complied with these Rules during the reporting period, shall be mailed or emailed a notice by the Director to inform them of their noncompliance. Attorneys shall be given

61 additional days from the original certification due date provided in Rule 796(a)(2) to achieve compliance and submit a certification, by means of the Board's online reporting system or other means specified by the Director, stating that they have complied with these Rules or are exempt. The Director shall not send a notice of noncompliance to attorneys (1) whom the Director knows, based on the status of the attorneys' licenses with the ARDC as inactive, retirement, disability inactive, judicial, judicial staff, or military are fully exempt from these Rules; or (ii) who have already been removed from the master roll of attorneys due to the attorney's failure to comply with the MCLE requirements for two consecutive reporting periods or more.

(c) Grace Period

Attorneys given additional time pursuant to paragraph (b) to comply with the requirements of these Rules may use that "grace period" to attain the adequate number of hours for compliance. Credit hours earned during a grace period may be counted toward compliance with the previous reporting period requirement, and hours in excess of the requirement may be used to meet the current reporting period's requirement. No attorney may receive more than one grace period with respect to the same reporting period, and the grace period shall not be extended if the Director fails to send, or the attorney fails to receive, a notice pursuant to paragraph (b).

(d) Late Fees

(1) Attorneys who are not fully exempt under Rule 791(a)(1), (2), (3), (4), or (5) and who, for whatever reason, fail to submit an MCLE certification pursuant to Rule 796(a)(2) within 31 days after the end of their reporting period shall pay a late fee, in an amount to be set by the Board. The Director shall not assess a late fee to an attorney whom the Director knows, based on the status of the attorney's license with the ARDC as inactive, retirement, disability inactive, judicial, judicial staff, or military are fully exempt from these Rules.

(2) Attorneys who submit an MCLE certification to the Board within 31 days after their reporting period ends and who certify that they failed to comply with these Rules during the applicable reporting period, shall pay a late fee, in an amount to be set by the Board that is less than the late fee imposed pursuant to paragraph (d)(1).

(e) Failure to Comply or Failure to Report

The Director shall refer to the ARDC the names of attorneys who were mailed or emailed a notice of noncompliance and who, by the end of their grace periods, failed either: (1) to comply or to report compliance with the requirements of these Rules to the MCLE Board; or (2) to report an exemption from the requirements of these Rules to the MCLE Board. The Director shall also refer to the ARDC the names of attorneys who, by the end of their grace period, failed to pay any outstanding MCLE fee. The ARDC shall then send notice, by mail or email, to any such attorneys that they will be removed from the master roll on the date specified in the notice, which shall be no sooner than 21 days from the date of the notice, because of their failure to comply or report compliance, failure to report an exemption, or failure to pay an outstanding MCLE fee. The ARDC need not send a notice to attorneys who have already been removed from the master roll of attorneys due to the attorney's failure to comply with the MCLE requirements for two consecutive reporting periods or more. The ARDC shall remove such attorneys from the master roll of attorneys

on the date specified in the notice unless the Director certifies before that date that an attorney has complied. Such removal is not a disciplinary sanction.

(f) Recordkeeping and Audits

(1) Each attorney subject to these Rules shall maintain, for three years after the end of the relevant reporting period, certificates of attendance received pursuant to Rule 795(a)(8), (c)(4), (d)(1)(ix), (d)(2)(v), (d)(3), as well as sufficient documentation necessary to corroborate CLE activity hours earned pursuant to Rule 795(d)(4) through (d)(9).

(2) The Board may conduct a reasonable number of audits, under a plan approved by the Court. At least some of these audits shall be randomly selected, to determine the accuracy of attorneys' certifications of compliance or exemption. With respect to audits that are not randomly selected, in choosing subjects for those audits the Board shall give increased consideration to attorneys who assumed inactive or retirement status under Supreme Court Rule 756(a)(5) or (a)(6), and were thereby fully or partially exempt from these Rules pursuant to Rule 791(b) or (c), and who subsequently resumed active status.

(3) The ARDC may investigate an attorney's compliance with these Rules only upon referral from the Director; the ARDC will not investigate an attorney's compliance with these Rules as part of its other investigations. When the Director refers a matter to the ARDC, the investigation, and any resulting prosecution, shall be conducted in accordance with the rules pertaining to ARDC proceedings.

(g) Audits That Reveal an Inaccurate Certification

(1) If an audit conducted pursuant to paragraph (f)(2) reveals that the attorney was not in compliance with or exempt from these Rules for any reporting period for which the attorney had filed a certification of compliance or exemption, the Director shall provide the attorney with written notice containing: (i) the results of the audit, specifying each aspect of the Rules with which the attorney did not comply or the reason why the attorney is not exempt; (ii) a summary of the basis of that determination; and (iii) a deadline, which shall be at least 30 days from the date of the notice, for the attorney to file a written response if the attorney objects to any of the contents of the notice.

(2) After considering any response from the attorney, if the Board determines that the attorney filed an inaccurate certification, the attorney shall be given 60 days in which to file an amended certification, together with all documentation specified in paragraph (f)(1), demonstrating full compliance with the applicable MCLE requirements. The attorney also shall pay a late fee in an amount to be set by the Board. The assessment of a late fee is not a disciplinary sanction.

(3) If the results of the audit suggest that the attorney willfully filed a false certification, the Board through its Director shall provide that information to the ARDC.

(h) Reinstatement

An attorney who has been removed from the master roll due to noncompliance with these Rules may be reinstated by the ARDC, upon recommendation of the Board. Such recommendation may be made only after the removed attorney files a certification which the Board determines shows

full compliance with the applicable MCLE requirements for each reporting period for which the attorney was removed from the master roll due to MCLE noncompliance. For attorneys who have existing removals from the master roll of attorneys encompassing three MCLE reporting periods or more, the credits required to address those existing removals are capped at the credits required for the three most recent reporting periods for which the attorney is removed.

To be reinstated, the attorney shall pay a reinstatement fee for each reporting period for which the attorney was removed from the master roll due to MCLE noncompliance with the request, in an amount to be set by the Board. The Board may elect to cap the total amount of the reinstatement fee when an attorney has been removed from the master roll due to MCLE noncompliance in more than six consecutive reporting periods. The attorney must also meet any further conditions and pay any additional fees as may be required by Rule 756.

The removed attorney may attain the necessary credit hours during the period of removal to meet the requirements for the years of noncompliance. Excess hours earned during the period of removal, however, may not be counted towards meeting the current or future reporting periods' requirements. The MCLE credits needed to address the existing removals are in addition to the credits that the attorney must earn for the reporting period in which the attorney returns to active status.

Adopted September 29, 2005, effective immediately; amended October 5, 2006, effective immediately; amended September 27, 2011; effective immediately; amended Nov. 19, 2015, eff. Feb. 1, 2016; amended Jan. 29, 2019, eff. Mar. 1, 2019; amended Mar. 18, 2022, eff. May 1, 2022.

Rule 797. Confidentiality

All files, records and proceedings of the Board must be kept confidential, and may not be disclosed except (a) in furtherance of the duties of the Board, (b) upon written request and consent of the persons affected, (c) pursuant to a proper subpoena *duces tecum*, or (d) as ordered by a court of competent jurisdiction.

Adopted September 29, 2005, effective immediately.

Rule 798. Reserved

Part D. Commission on Professionalism

Rule 799. Supreme Court Commission on Professionalism

(a) Purpose

The Supreme Court Commission on Professionalism is hereby established in order to promote among the lawyers and judges of Illinois principles of integrity, professionalism and civility; to foster commitment to the elimination of bias and divisiveness within the legal and judicial systems;

and to ensure that those systems provide equitable, effective and efficient resolution of problems and disputes for the people of Illinois.

(b) Membership and Terms

(1) The Court shall appoint 14 members to the Commission, one of whom shall be designated the Chair and one of whom shall be designated the Vice-Chair. The Director of the Minimum Continuing Legal Education Program and the Administrator of the Attorney Registration and Disciplinary Commission shall serve as *ex-officio* members in addition to the 14 members appointed by the Court but shall have no vote.

(2) In addition to the members described above, the Chief Justice may invite to serve on the Commission a judge of the United States District Courts located in Illinois.

(3) The appointed members of the Commission shall be selected with regard to their reputations for professionalism, and for their past contributions to the bar and to their communities, to the extent feasible, the appointees should reflect a diversity of geography, practice areas, race, ethnicity, and gender.

(4) Members of the Commission shall be appointed for terms of three years, except that in making initial appointments to the Commission, the Court may limit appointments to ensure that the terms of the Commission's members are staggered, so that no more than one third of the members' terms expire in any given year.

(5) None of the members of the Commission shall receive compensation for their service, but all members shall be reimbursed for their necessary expenses.

(c) Duties

The Commission's duties shall include:

(1) Creating and promoting an awareness of professionalism by all members of the Illinois bar and bench;

(2) Gathering and maintaining information to serve as a resource on professionalism for lawyers, judges, court personnel, and members of the public;

(3) Developing public statements on principles of ethical and professional responsibility for distribution to the bench and bar for purposes of encouraging, guiding and assisting individual lawyers, law firms and bar associations on the ethical and professional tenets of the profession;

(4) Assisting CLE providers with the development of courses and activities offered to fulfill the professional responsibility requirement for minimum continuing legal education under Rule 794(d)(1);

(5) Determining and publishing criteria for, monitoring, coordinating, and approving, courses and activities offered to fulfill the professional responsibility requirement for minimum continuing legal education under Rule 794(d)(1);

(6) Reviewing and approving the content of courses and activities offered to fulfill the professional responsibility requirement for minimum continuing legal education under Rule 794(d)(1) and forwarding the Commission's determination to the Minimum Continuing Legal Education (MCLE) Board;

(7) Monitoring activities related to professionalism outside the State of Illinois;

(8) Collaborating with law schools in the development and presentation of professionalism programs for law student orientation and other events as coordinated with law school faculty;

(9) Facilitating cooperation among practitioners, bar associations, law schools, courts, civic and lay organizations and others in addressing matters of professionalism, ethics, and public understanding of the legal profession; and

(10) Recommending to the Court other methods and means of improving the profession and accomplishing the purposes of this Commission.

The Commission shall have no authority to impose discipline upon any member of the Illinois bar or bench, or to exercise any duties or responsibilities belonging to either the Judicial Inquiry Board, the Attorney Registration and Disciplinary Commission, the Board of Admissions to the Bar, or the MCLE Board.

(d) Administration

(1) The Commission shall have the authority to appoint, with the approval of the Supreme Court, an Executive Director, who shall be an attorney who is an active member in good standing of the Illinois bar. The Executive Director shall have the authority to hire such additional staff as necessary to perform the Commission's responsibilities.

(2) The Commission shall meet at least twice a year and at other times at the call of the Chair. A majority of its members shall constitute a quorum for any action. Meetings may be held at any place within the state and may also be held by means of telecommunication that permits reasonably accurate and contemporaneous participation by the members attending by such means.

(3) The Chair may appoint committees of members and assign them to such responsibilities, consistent with the purposes, powers and duties of the Commission, as the Chair may deem appropriate.

(4) The Commission shall file annually with the Court an accounting of the monies received and expended for its activities, and there shall be an annual independent audit of the funds as directed by the court, the expenses of which shall be paid out of the fund.

(5) The Commission shall submit an annual report to the Court describing and evaluating the effectiveness of its activities.

(6) Approving CLE Programs.

(i) The Commission shall receive from the MCLE Board applications for accreditation of those courses and activities offered to fulfill the professional responsibility requirement for minimum continuing legal education under Rule 794(d)(1). The Commission shall establish procedures for approval of such courses or activities consistent with the criteria published under paragraph (c)(5) of this rule. Professional responsibility courses and activities, the content of which is approved by the Commission, shall be forwarded to the MCLE Board for accreditation. Absent Commission approval, such courses and activities are not eligible for CLE accreditation. The Commission shall complete its review as expeditiously as possible and with regard to the applicable time lines contained in Rule 795.

(ii) Providers that have been designated "Accredited Continuing Legal Education Providers" under Rule 795(b) must, in addition to that accreditation, obtain Commission approval of any course or activity offered to fulfill the professional responsibility requirement of Rule 794(d)(1), but will not be required to pay an accreditation fee in addition to the fee the provider has paid to the Minimum Continuing Legal Education Board.

(e) Funding

The Commission shall be funded by an annual assessment as provided in Rule 756.

Adopted September 29, 2005, effective immediately; amended December 6, 2005, effective immediately; amended June 5, 2007, effective immediately; amended September 27, 2011, effective immediately; amended June 5, 2012, eff. immediately; amended Jan. 18, 2013, eff. immediately.

Article VIII. Illinois Rules of Professional Conduct of 2010

Preamble: a Lawyer's Responsibilities

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, *e.g.*, Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of

official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.

[6A] It is also the responsibility of those licensed as officers of the court to use their training, experience, and skills to provide services in the public interest for which compensation may not be available. It is the responsibility of those who manage law firms to create an environment that is hospitable to the rendering of a reasonable amount of uncompensated service by lawyers practicing in that firm. Service in the public interest may take many forms. These include but are not limited to *pro bono* representation of persons unable to pay for legal services and assistance in the organized bar's efforts at law reform. An individual lawyer's efforts in these areas is evidence of the lawyer's good character and fitness to practice law, and the efforts of the bar as a whole are essential to the bar's maintenance of professionalism. To help monitor and quantify the extent of these activities, and to encourage an increase in the delivery of legal services to persons of limited means, Illinois Supreme Court Rule 756(f) requires disclosure with each lawyer's annual registration with the Illinois Attorney Registration and Disciplinary Commission of the approximate amount of his or her *pro bono* legal service and the approximate amount of qualified monetary contributions. See also Committee Comment (June 14, 2006) to Illinois Supreme Court Rule 756(f).

[6B] The absence from the Illinois Rules of a counterpart to ABA Model Rule 6.1 regarding *pro bono* and public service should not be interpreted as limiting the responsibility of lawyers to render uncompensated service in the public interest. Rather, the rationale is that this responsibility is not appropriate for disciplinary rules because it is not possible to articulate an appropriate disciplinary standard regarding *pro bono* and public service.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to

clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments and the Preamble and Scope do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are

not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation and are instructive and not directive. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

Adopted July 1, 2009, effective January 1, 2010.

RULE 1.0: TERMINOLOGY

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(g) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes

that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m)"Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording and electronic communications. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

Comment

Confirmed in Writing

[1] If it is not feasible to obtain or transmit a written confirmation, if required, at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, and written confirmation is required, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

[2] Whether two or more lawyers constitute a firm within paragraph (c) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is

relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.

[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[4] Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud

[5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

[6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (*e.g.*, a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, *e.g.*, Rules 1.2(c), 1.6(a) and 1.7(b). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making

decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. Rule 1.5(e) requires that a person's consent be confirmed in writing. For a definition of "writing" and "confirmed in writing," see paragraphs (n) and (b). Other Rules require that a client's consent be obtained in a writing signed by the client. See Rules 1.5(c), 1.8(a) and (g). For a definition of "signed," see paragraph (n).

Screened

[8] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.10, 1.11, 1.12 or 1.18.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other information, including information in electronic form, relating to the matter, and periodic reminders of the screen to the screened lawyer and all other firm personnel.

[10] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

RULE 1.1: COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Adopted July 1, 2009, effective January 1, 2010.

Comment

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Retaining Or Contracting With Other Lawyers

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to

provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2(e) and Comment [15], 1.4, 1.5(e), 1.6, and 5.5(a). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Maintaining Competence

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may

(1) discuss the legal consequences of any proposed course of conduct with a client,

(2) counsel or assist a client to make a good-faith effort to determine the validity, scope,

meaning or application of the law, and

(3) counsel or assist a client in conduct expressly permitted by Illinois law that may violate or conflict with federal or other law, as long as the lawyer advises the client about that federal or other law and its potential consequences.

(e) After accepting employment on behalf of a client, a lawyer shall not thereafter delegate to another lawyer not in the lawyer's firm the responsibility for performing or completing that employment, without the client's informed consent.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

Comment

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, *e.g.*, Rules 1.1, 1.8 and 5.6, and Supreme Court Rules 13(c)(6) and 137(e).

Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] Paragraph (d)(3) was adopted to address the dilemma facing a lawyer in Illinois after the passage of the Illinois Compassionate Use of Medical Cannabis Pilot Program Act effective January 1, 2014. The Act expressly permits the cultivation, distribution, and use of marijuana for medical purposes under the conditions stated in the Act. Conduct permitted by the Act may be prohibited by the federal Controlled Substances Act, 21 U.S.C. §§801-904 and other law. The

conflict between state and federal law makes it particularly important to allow a lawyer to provide legal advice and assistance to a client seeking to engage in conduct permitted by Illinois law. In providing such advice and assistance, a lawyer shall also advise the client about related federal law and policy. Paragraph (d)(3) is not restricted in its application to the marijuana law conflict. A lawyer should be especially careful about counseling or assisting a client in other contexts in conduct that may violate or conflict with federal, state, or local law.

[11] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1. In such situations, the lawyer should also consider whether disclosure of information relating to the representation is appropriate. See Rule 1.6(b).

[12] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[13] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[14] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

[15] The prohibition stated in paragraph (e) has existed in Illinois ethics rules and in the prior Code since 1980. It is intended to curtail abuses that occasionally occur when a lawyer attempts to transfer complete or substantial responsibility for a matter to an unaffiliated lawyer without the client's awareness or consent. The Rule is designed to clarify the lawyer's obligation to complete the employment contemplated unless the client gives informed consent to substitution by an unaffiliated lawyer. The Rule is not intended to prohibit lawyers from hiring lawyers outside of their firm to perform certain services on the client's or the law firm's behalf. Nor is it intended to prevent lawyers from engaging lawyers outside of their firm to stand in for discrete events in situations such as personal emergencies, illness or schedule conflicts.

Adopted July 1, 2009, effective January 1, 2010; amended June 14, 2013, eff. July 1, 2013; amended

Oct. 15, 2015, eff. Jan. 1, 2016.

RULE 1.3: DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. See Illinois Supreme Court Rule 776, Appointment of Receiver in Certain Cases.

Adopted July 1, 2009, effective January 1, 2010.

RULE 1.4: COMMUNICATION

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations–depending on both the

importance of the action under consideration and the feasibility of consulting with the client–this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(e).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a

lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

RULE 1.5: FEES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer, or if the primary service performed by one lawyer is the referral of the client to another lawyer and each lawyer assumes joint financial responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

Adopted July 1, 2009, effective January 1, 2010.

Comment

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative

basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Comments [3B] through [3D] to Rule 1.15 and Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8 (i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

Prohibited Contingent Fees

[6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of postjudgment balances due under support, alimony or other financial orders because such contracts do not implicate the same policy concerns.

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, or referral of a matter where appropriate, and often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or, where the primary service performed by one lawyer is the referral of the client to another lawyer, if each lawyer assumes financial responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint financial responsibility for the representation entails financial responsibility

for the representation as if the lawyers were associated in a general partnership. See *In re Storment*, 203 Ill. 2d 378 (2002). A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm, or payments made pursuant to a separation or retirement agreement.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by law or rule, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Adopted July 1, 2009, effective January 1, 2010.

RULE 1.6: CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b) or required by paragraph (c).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a crime in circumstances other than those specified in paragraph (c);

(2) to prevent the client from committing fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(6) to comply with other law or a court order; or

(7) to detect and resolve conflicts of interest if the revealed information would not prejudice the client.

(c) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm.

(d) Information received by a lawyer participating in a meeting or proceeding with a trained intervener or panel of trained interveners of an approved lawyers' assistance program, or in an intermediary program approved by a circuit court in which nondisciplinary complaints against judges or lawyers can be referred, shall be considered information relating to the representation of a client for purposes of these Rules.

(e) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

Comment

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may

not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (c) recognizes the overriding value of life and physical integrity and requires disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows from information relating to a representation that a client or other person has accidentally discharged toxic waste into a town's water must reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[6A] Paragraph (b)(1) preserves the policy of the 1980 Illinois Code of Professional Responsibility and the 1990 Illinois Rules of Professional Conduct that permitted a lawyer to reveal the intention of a client to commit a crime. This general provision would permit disclosure where the client's intended conduct is a crime, including a financial crime, and the situation is not covered by paragraph (c).

[7] Paragraph (b)(2) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing fraud, as defined in Rule 1.0(d), that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of

which the client has used or is using the lawyer's services. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Like paragraph (b)(1), paragraph (b)(2) does not require the lawyer to reveal the client's misconduct, but the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and Rule 1.13(c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

[8] Paragraph (b)(3) addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(3) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

[9] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(4) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

[10] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[11] A lawyer entitled to a fee is permitted by paragraph (b)(5) to prove the services rendered in an action to collect it. This aspect of the Rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[12] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law

supersedes this Rule and requires disclosure, paragraph (b)(6) permits the lawyer to make such disclosures as are necessary to comply with the law.

Detection of Conflicts of Interest

[13] Paragraph (b)(7) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See Rule 1.17, Comment [7]. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Even limited information should be disclosed only to the extent reasonably necessary. Moreover, the disclosure of any information is prohibited if it would prejudice the client (e.g., disclosure would compromise the attorney-client privilege; the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

[14] Paragraph (b)(7) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (b)(7). Paragraph (b)(7) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, see Comment [5], such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

[15] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(6) permits the lawyer to comply with the court's order.

[16] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent

practicable.

[17] Paragraph (b) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(7). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 1.2(d), 4.1(b), and 8.1. Rules 3.3 and 8.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

Withdrawal

[17A] If the lawyer's services will be used by a client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1). The lawyer may give notice of the fact of withdrawal regardless of whether the lawyer decides to disclose information relating to a client's representation as permitted by paragraph (b). The lawyer may also withdraw or disaffirm any opinion or other document that had been prepared for the client or others. Where the client is an organization, the lawyer must also consider the provisions of Rule 1.13.

Acting Competently to Preserve Confidentiality

[18] Paragraph (e) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (e) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Comments [3]-[4].

[19] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

Former Client

[20] The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

Lawyers' Assistance and Court Intermediary Programs

[21] Information about the fitness or conduct of a law student, lawyer or judge may be received by a lawyer while participating in an approved lawyers' assistance program. Protecting the confidentiality of such information encourages law students, lawyers and judges to seek assistance through such programs. Without such protection, law students, lawyers and judges may hesitate to seek assistance, to the detriment of clients and the public. Similarly, lawyers participating in an approved intermediary program established by a circuit court to resolve nondisciplinary issues among lawyers and judges may receive information about the fitness or conduct of a lawyer or judge. Paragraph (d) therefore provides that any information received by a lawyer participating in an approved lawyers' assistance program or an approved circuit court intermediary program will be protected as confidential client information for purposes of the Rules. See also Comment [5] to Rule 8.3.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by

a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent.

Adopted July 1, 2009, effective January 1, 2010.

Comment

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For a definition of "informed consent" see Rule 1.0(e).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: (1) clearly identify the client or clients; (2) determine whether a conflict of interest exists; (3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and (4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and nonlitigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than one client is involved,

whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9. See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9(c).

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible

positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

[11] When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, *e.g.*, as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

[12] A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 1.8(j).

Interest of Person Paying for a Lawyer's Service

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

[16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(m)), such representation may be precluded by paragraph (b)(1).

Informed Consent

[18] Informed consent requires that each affected client be aware of the relevant circumstances

and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(e) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

[20] Reserved.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other clients and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict

[22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, *e.g.*, the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance

consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph (b).

Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

[25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation

include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With

regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege generally does not attach. Hence, it should generally be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(c).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

Organizational Clients

[34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors.

Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

Adopted July 1, 2009, effective January 1, 2010.

RULE 1.8: CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is informed in writing that the client may seek the advice of independent legal counsel on the transaction, and is given a reasonable opportunity to do so; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which

may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or *nolo contendere* pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses;

and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

Adopted July 1, 2009, effective January 1, 2010.

Comment

Business Transactions Between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or

a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the lawyer inform the client in writing that the client may seek the advice of independent legal counsel and provide a reasonable opportunity for the client to do so. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.0(e) (definition of informed consent). The common law regarding business transactions between lawyer and client may impose additional requirements, such as encouraging the client to seek independent legal counsel, in lawyer liability and other nondisciplinary contexts.

[3] The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

Use of Information Related to Representation

[5] Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3.

Gifts to Lawyers

[6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

[7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance the client should have the detached advice that another lawyer can provide. The sole exception to this Rule is where the client is a relative of the donee.

[8] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights

[9] An agreement by which a lawyer acquires literary or media rights concerning the conduct

of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraphs (a) and (i).

Financial Assistance

[10] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Person Paying for a Lawyer's Services

[11] Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

[12] Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule. 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph.

Aggregate Settlements

[13] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or *nolo contendere* plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 1.0(e) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims

[14] Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[15] Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

Acquiring Proprietary Interest in Litigation

[16] Paragraph (i) states the traditional general rule that lawyers are prohibited from acquiring

a proprietary interest in litigation. Like paragraph (e), the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

Client-Lawyer Sexual Relationships

[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[19] When the client is an organization, paragraph (j) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters.

Imputation of Prohibitions

[20] Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client. The prohibition set forth in paragraph (j) is personal and is not applied to associated lawyers.

Adopted July 1, 2009, effective January 1, 2010.

RULE 1.9: DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a

subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. See Comment [9]. Current and former government lawyers must comply with this Rule to the extent required by Rule 1.11.

[2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdictions. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving Between Firms

[4] When lawyers have been associated within a firm but then end their association, the

question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10(b) for the restrictions on a firm once a lawyer has terminated association with the firm.

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients.

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9(c).

[8] Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

[9] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent. With regard to the effectiveness of an advance waiver, see Comment [22] to Rule 1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.

Adopted July 1, 2009, effective January 1, 2010.

RULE 1.10: IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11 and with former judges, arbitrators, mediators or other third-party neutrals is governed by Rule 1.12.

(e) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

Adopted July 1, 2009, effective January 1, 2010.

Comment

Definition of "Firm"

[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0(c). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0, Comments [2] through [4].

Principles of Imputed Disqualification

[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by

the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(b).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(k) and 5.3.

[5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

[6] Rule 1.10(c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7(b) and that each affected client or former client has given informed consent to the representation. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7, Comment [22]. For a definition of informed consent, see Rule 1.0(e).

[7] Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 1.11(b) and (c), not this Rule. Under Rule 1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer. Where a lawyer has joined a private firm after having been a judge or other adjudicative officer or law clerk to such person or an arbitrator, mediator or other third-party neutral, imputation is governed by Rule 1.12, not this Rule.

[8] Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

[9] Where the conditions of paragraph (e) are met, imputation is removed and consent is not required. Requirements for screening procedures are stated in Rule 1.0(k). This paragraph does not prohibit a lawyer from receiving a salary or partnership share established by independent agreement, but that lawyer may not receive compensation directly relating the lawyer's compensation to the fee in the matter in which the lawyer is disqualified. Nonconsensual screening in such cases adequately balances the interests of the former client in protecting its confidential information, the interests of the current client in hiring the counsel of its choice (including a law firm that may have represented the client in similar matters for many years), and the interests of lawyers in career mobility, particularly when they are moving involuntarily.

Adopted July 1, 2009, effective January 1, 2010.

RULE 1.11: SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEE

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee

therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9;

and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent; or

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 1.0(e) for the definition of informed consent.

[2] Paragraphs (a)(1), (a)(2) and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule. Rather, paragraph (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

[3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under paragraph (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by paragraph (d). As with paragraphs (a)(1) and (d)(1), Rule 1.10 is not applicable to the conflicts of interest addressed by these paragraphs.

[4] This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

[5] When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by paragraph (d), the latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Rule 1.13 Comment [9].

[6] Paragraphs (b) and (c) contemplate a screening arrangement. See Rule 1.0(k) (requirements for screening procedures). These paragraphs do not prohibit a lawyer from receiving a salary or partnership share established by independent agreement, but that lawyer may not receive compensation directly relating the lawyer's compensation to the fee in the matter in which the lawyer is disqualified.

[7] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[8] Paragraph (c) operates only when the lawyer in question has knowledge of the information,

which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

[9] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

[10] For purposes of paragraph (e) of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

RULE 1.12: FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] This Rule generally parallels Rule 1.11. The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative

responsibility that did not affect the merits. Compare the Comment to Rule 1.11. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges.

[2] Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent. See Rule 1.0(e) and (b). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.4.

[3] Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

[4] Requirements for screening procedures are stated in Rule 1.0(k). Paragraph (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[5] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

Adopted July 1, 2009, effective January 1, 2010.

RULE 1.13: ORGANIZATION AS CLIENT

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a crime, fraud or other violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or a refusal to act, that is clearly a crime or fraud, and

(2) the lawyer reasonably believes that the crime or fraud is reasonably certain to result in substantial injury to the organization,

then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged crime, fraud or other violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged crime, fraud or other violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Adopted July 1, 2009, effective January 1, 2010.

Comment

The Entity as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

[2] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean,

however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. Paragraph (b) makes clear, however, that when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is a crime, fraud or other violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As defined in Rule 1.0(f), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

[4] In determining how to proceed under paragraph (b), the lawyer should give due consideration to the seriousness of the misconduct and its consequences, the responsibility in the organization and the apparent motivation of those involved, the policies of the organization concerning such matters, and any other relevant considerations. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the lawyer to ask the constituent to reconsider the matter; for example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation to persons outside the organization. Even in circumstances where a lawyer is not obligated by Rule 1.13 to proceed, a lawyer may bring to the attention of an organizational client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interest of the organization.

[5] Paragraph (b) also makes clear that when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere, for example, in the independent directors of a corporation.

Relation to Other Rules

[6] The authority and responsibility provided in this Rule are concurrent with the authority and

responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rules 1.8, 1.16, 3.3 or 4.1. Paragraph (c) of this Rule supplements Rule 1.6(b) by providing an additional basis upon which the lawyer may reveal information relating to the representation, but does not modify, restrict, or limit the provisions of Rule 1.6(b). Under Paragraph (c) the lawyer may reveal such information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a crime or fraud, and then only to the minimum extent the lawyer reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the lawyer's services be used in furtherance of the crime or fraud, but it is required that the matter be related to the lawyer's representation of the organization. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rules 1.6(b)(1), 1.6(b)(2) or 1.6(b)(3) may permit the lawyer to disclose confidential information. In such circumstances Rule 1.2(d) may also be applicable, in which event, withdrawal from the representation under Rule 1.16(a)(1) may be required. Because the lawyer may reveal information relating to the representation outside the organization under paragraph (c) only in circumstances involving a crime or fraud, the lawyer may be required to act under paragraph (b) in situations that arise out of violations of law that do not constitute a crime or fraud even though disclosure outside the organization would not be permitted by paragraph (c).

[7] Paragraph (d) makes clear that the authority of a lawyer to disclose information relating to a representation in circumstances described in paragraph (c) does not apply with respect to information relating to a lawyer's engagement by an organization to investigate an alleged violation of law or to defend the organization or an officer, employee or other person associated with the organization against a claim arising out of an alleged crime, fraud or other violation of law. This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim.

[8] A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal, and what the lawyer reasonably believes to be the basis for his or her discharge or withdrawal.

Government Agency

[9] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority

under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority. See Scope.

Clarifying the Lawyer's Role

[10] There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

[11] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation

[12] Paragraph (g) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions

[13] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations might have a corresponding right. Where permitted, such an action may be brought nominally by the corporation or unincorporated association, but usually is, in fact, a legal controversy over management of the organization.

[14] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

Adopted July 1, 2009, effective January 1, 2010.

RULE 1.14: CLIENT WITH DIMINISHED CAPACITY

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must to look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should

ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decisionmaking tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decisionmaking autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available, except when that representative's actions or inaction threaten immediate and irreparable harm to the person. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

Adopted July 1, 2009, effective January 1, 2010.

RULE 1.15: SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be deposited in one or more separate and identifiable interest- or dividend-bearing client trust accounts maintained at an eligible financial institution in the state where the lawyer's office is

situated, or elsewhere with the informed consent of the client or third person. For the purposes of this Rule, a client trust account means an IOLTA account as defined in paragraph (j)(2), or a separate, interest-bearing non-IOLTA client trust account established to hold the funds of a client or third person as provided in paragraph (f). Funds of clients or third persons shall not be deposited in a non-interest-bearing or non-dividend-bearing account. Other, tangible property shall be identified as such and appropriately safeguarded. Complete records of client trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

Maintenance of complete records of client trust accounts shall require that a lawyer:

(1) prepare and maintain receipt and disbursement journals for all client trust accounts required by this Rule containing a record of deposits and withdrawals from client trust accounts specifically identifying the date, source, and description of each item deposited, and the date, payee and purpose of each disbursement;

(2) prepare and maintain contemporaneous ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the date of each deposit, the names of all persons for whom the funds are or were held, the amount of such funds, the dates, descriptions and amounts of charges or withdrawals, and the names of all persons to whom such funds were disbursed;

(3) maintain copies of all accountings to clients or third persons showing the disbursement of funds to them or on their behalf, along with copies of those portions of clients' files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them;

(4) maintain all client trust account checkbook registers, check stubs, bank statements, records of deposit, and checks or other records of debits;

(5) maintain copies of all retainer and compensation agreements with clients;

(6) maintain copies of all bills rendered to clients for legal fees and expenses;

(7) prepare and maintain reconciliation reports of all client trust accounts, on at least a quarterly basis, including reconciliations of ledger balances with client trust account balances;

(8) make appropriate arrangements for the maintenance of the records in the event of the closing, sale, dissolution, or merger of a law practice.

Records required by this Rule may be maintained by electronic, photographic, or other media provided that printed copies can be produced, and the records are readily accessible to the lawyer.

Each client trust account shall be maintained only in an eligible financial institution selected by the lawyer in the exercise of ordinary prudence.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit in a client trust account funds received to secure payment of legal fees and expenses, to be withdrawn by the lawyer only as fees are earned and expenses incurred. Funds received as a fixed fee, a general retainer, or an advance payment retainer shall be deposited

in the lawyer's general account or other account belonging to the lawyer. An advance payment retainer may be used only when necessary to accomplish some purpose for the client that cannot be accomplished by using a security retainer. An agreement for an advance payment retainer shall be in a writing signed by the client that uses the term "advance payment retainer" to describe the retainer, and states the following:

(1) the special purpose for the advance payment retainer and an explanation why it is advantageous to the client;

(2) that the retainer will not be held in a client trust account, that it will become the property of the lawyer upon payment, and that it will be deposited in the lawyer's general account;

(3) the manner in which the retainer will be applied for services rendered and expenses incurred;

(4) that any portion of the retainer that is not earned or required for expenses will be refunded to the client;

(5) that the client has the option to employ a security retainer, provided, however, that if the lawyer is unwilling to represent the client without receiving an advance payment retainer, the agreement must so state and provide the lawyer's reasons for that condition.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) All funds of clients or third persons held by a lawyer or law firm which are nominal in amount or are expected to be held for a short period of time, including advances for costs and expenses, and funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm, shall be deposited in one or more IOLTA accounts, as defined in paragraph (j)(2). A lawyer or law firm shall deposit all funds of clients or third persons which are not nominal in amount or expected to be held for a short period of time into a separate interest- or dividend-bearing client trust account with the client designated as income beneficiary. Funds of clients or third persons shall not be deposited in a non-interest-bearing or non-dividend-bearing account. Each IOLTA account shall comply with the following provisions:

(1) Each lawyer or law firm in receipt of nominal or short-term client funds shall establish one or more IOLTA accounts with an eligible financial institution authorized by federal or state law to do business in the state of Illinois and which offers IOLTA accounts within the requirements of this Rule as administered by the Lawyers Trust Fund of Illinois.

(2) Eligible institutions shall maintain IOLTA accounts that pay the highest interest rate or

dividend available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility guidelines, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA account.

(3) An IOLTA account that meets the highest comparable rate or dividend standard set forth in paragraph (f)(2) must use one of the identified account options as an IOLTA account, or pay the equivalent yield on an existing IOLTA account in lieu of using the highest-yield bank product:

(a) a checking account paying preferred interest rates, such as money market or indexed rates, or any other suitable interest-bearing deposit account offered by the eligible institution to its non-IOLTA customers.

(b) for accounts with balances of $100,000 or more, a business checking account with automated investment feature, such as an overnight sweep and investment in repurchase agreements fully collateralized by U.S. Government securities as defined in paragraph (h).

(c) for accounts with balances of $100,000 or more, a money market fund with, or tied to, check-writing capacity, that must be solely invested in U.S. Government securities or securities fully collateralized by U.S. Government securities, and that has total assets of at least $250 million.

(4) As an alternative to the account options in paragraph (f)(3), the financial institution may pay a "safe harbor" yield equal to 70% of the Federal Funds Target Rate or 1.0%, whichever is higher.

(5) Each lawyer or law firm shall direct the eligible financial institution to remit monthly earnings on the IOLTA account directly to the Lawyers Trust Fund of Illinois. For each individual IOLTA account, the eligible financial institution shall provide: a statement transmitted with each remittance showing the name of the lawyer or law firm directing that the remittance be sent; the account number; the remittance period; the rate of interest applied; the account balance on which the interest was calculated; the reasonable service fee(s) if any; the gross earnings for the remittance period; and the net amount of earnings remitted. Remittances shall be sent to the Lawyers Trust Fund electronically unless otherwise agreed. The financial institution may assess only allowable reasonable fees, as defined in paragraph (j)(8). Fees in excess of the earnings accrued on an individual IOLTA account for any month shall not be taken from earnings accrued on other IOLTA accounts or from the principal of the account.

(g) A lawyer or law firm should exercise reasonable judgment in determining whether funds of a client or third person are nominal in amount or are expected to be held for a short period of time. No charge of ethical impropriety or other breach of professional conduct shall attend to a lawyer's or law firm's exercise of reasonable judgment under this rule or decision to place client

funds in an IOLTA account or a non-IOLTA client trust account on the basis of that determination. Ordinarily, in determining the type of account into which to deposit particular funds for a client or third person, a lawyer or a law firm shall take into consideration the following factors:

(1) the amount of interest which the funds would earn during the period they are expected to be held and the likelihood of delay in the relevant transaction or proceeding;

(2) the cost of establishing and administering the account, including the cost of the lawyer's services;

(3) the capability of the financial institution, through subaccounting, to calculate and pay interest earned by each client's funds, net of any transaction costs, to the individual client.

(h) All trust accounts, whether IOLTA or non-IOLTA, shall be established in compliance with the following provisions on dishonored instrument notification:

(1) A lawyer shall maintain trust accounts only in eligible financial institutions that have filed with the Attorney Registration and Disciplinary Commission an agreement, in a form provided by the Commission, to report to the Commission in the event any properly payable instrument is presented against a client trust account containing insufficient funds, irrespective of whether or not the instrument is honored. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon 30 days notice in writing to the Commission. The Commission shall annually publish a list of financial institutions that have agreed to comply with this rule and shall establish rules and procedures governing amendments to the list.

(2) The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(a) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors; and

(b) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment and the date paid, as well as the amount of overdraft created thereby. Such reports shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

(3) Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(4) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by paragraph (h) of this Rule. Fees charged for the reasonable cost of producing the reports and records required by paragraph (h) are the sole responsibility of the lawyer or law firm, and are not allowable reasonable fees for IOLTA accounts as those are defined in paragraph (j)(8).

(i) A lawyer who learns of unidentified funds in an IOLTA account must make periodic efforts to identify and return the funds to the rightful owner. If after 12 months of the discovery of the unidentified funds the lawyer determines that ascertaining the ownership or securing the return of the funds will not succeed, the lawyer must remit the funds to the Lawyers Trust Fund of Illinois. No charge of ethical impropriety or other breach of professional conduct shall attend to a lawyer's exercise of reasonable judgment under this paragraph (i).

A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to the Lawyers Trust Fund, which after verification of the claim will return the funds to the lawyer.

(j) Definitions

(1) "Funds" denotes any form of money, including cash, payment instruments such as checks, money orders or sales drafts, and electronic fund transfers.

(2) "IOLTA account" means a pooled interest- or dividend-bearing client trust account, established with an eligible financial institution with the Lawyers Trust Fund of Illinois designated as income beneficiary, for the deposit of nominal or short-term funds of clients or third persons as defined in paragraph (f) and from which funds may be withdrawn upon request as soon as permitted by law.

(3) "Eligible financial institution" is a bank or a savings bank insured by the Federal Deposit Insurance Corporation or an open-end investment company registered with the Securities and Exchange Commission that agrees to provide dishonored instrument notification regarding any type of client trust account as provided in paragraph (h) of this Rule; and that with respect to IOLTA accounts, offers IOLTA accounts within the requirements of paragraph (f) of this Rule.

(4) "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.

(5) "Money market fund" is an investment company registered under the Investment Company Act of 1940, as amended, that is qualified to hold itself out to investors as a money market fund or the equivalent of a money market fund under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act.

(6) "U.S. Government securities" refers to U.S. Treasury obligations and obligations issued by or guaranteed as to principal and interest by any AAA-rated United States agency or instrumentality thereof. A daily overnight financial repurchase agreement ("repo") may be established only with an institution that is deemed to be "well capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations.

(7) "Safe harbor" is a yield that if paid by the financial institution on IOLTA accounts shall be deemed as a comparable return in compliance with this Rule. Such yield shall be calculated as 70% of the Federal Funds Target Rate as reported in the Wall Street Journal on the first business day of the calendar month.

(8) "Allowable reasonable fees" for IOLTA accounts are per-check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, automated

investment ("sweep") fees, and a reasonable maintenance fee, if those fees are charged on comparable accounts maintained by non-IOLTA depositors. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account.

(9) "Unidentified funds" are amounts accumulated in an IOLTA account that cannot be documented as belonging to a client, a third person, or the lawyer or law firm.

(k) In the closing of a real estate transaction, a lawyer's disbursement of funds deposited but not collected shall not violate his or her duty pursuant to this Rule 1.15 if, prior to the closing, the lawyer has established a segregated Real Estate Funds Account (REFA) maintained solely for the receipt and disbursement of such funds, has deposited such funds into a REFA, and:

(1) is acting as a closing agent pursuant to an insured closing letter for a title insurance company licensed in the State of Illinois and uses for such funds a segregated REFA maintained solely for such title insurance business; or

(2) has met the "good-funds" requirements. The good-funds requirements shall be met if the bank in which the REFA was established has agreed in a writing directed to the lawyer to honor all disbursement orders drawn on that REFA for all transactions up to a specified dollar amount not less than the total amount being deposited in good funds. Good funds shall include only the following forms of deposits: (a) a certified check, (b) a check issued by the State of Illinois, the United States, or a political subdivision of the State of Illinois or the United States, (c) a cashier's check, teller's check, bank money order, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government, (d) a check drawn on the trust account of any lawyer or real estate broker licensed under the laws of any state, (e) a personal check or checks in an aggregate amount not exceeding $5,000 per closing if the lawyer making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the REFA, (f) a check drawn on the account of or issued by a lender approved by the United States Department of Housing and Urban Development as either a supervised or a nonsupervised mortgagee as defined in 24 C.F.R. § 202.2, (g) a check from a title insurance company licensed in the State of Illinois, or from a title insurance agent of the title insurance company, provided that the title insurance company has guaranteed the funds of that title insurance agent. Without limiting the rights of the lawyer against any person, it shall be the responsibility of the disbursing lawyer to reimburse the trust account for such funds that are not collected and for any fees, charges and interest assessed by the paying bank on account of such funds being uncollected.

Adopted July 1, 2009, effective January 1, 2010; amended July 1, 2011, effective September 1, 2011; amended April 7, 2015, eff. July 1, 2015.

Comment

[1] A lawyer should hold property of others with the care required of a professional fiduciary.

Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more client trust accounts. Client trust accounts should be made identifiable through their designation as "client trust account" or "client funds account" or words of similar import indicating the fiduciary nature of the account. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis complete records of client trust account funds as required by paragraph (a), including subparagraphs (1) through (8). These requirements articulate recordkeeping principles that provide direction to a lawyer in the handling of funds entrusted to the lawyer by a client or third person. Compliance with these requirements will benefit the attorney and the client or third party as these fiduciary funds will be safeguarded and documentation will be available to fulfill the lawyer's fiduciary obligation to provide an accounting to the owners of the funds and to refute any charge that the funds were handled improperly.

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.

[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed. Specific guidance concerning client trust accounts is provided in the Client Trust Account Handbook published by the Illinois Attorney Registration and Disciplinary Commission as well as on the website of the Illinois Attorney Registration and Disciplinary Commission.

[3A] Paragraph (c) relates to legal fees and expenses that have been paid in advance. The reasonableness, structure, and division of legal fees are governed by Rule 1.5 and other applicable law.

[3B] Paragraph (c) must be read in conjunction with *Dowling v. Chicago Options Associates, Inc.*, 226 Ill. 2d 277 (2007). In *Dowling*, the Court distinguished different types of retainers. It recognized advance payment retainers and approved their use in limited circumstances where the lawyer and client agree that a retainer should become the property of the lawyer upon payment. Prior to *Dowling*, the Court recognized only two types of retainers. The first, a general retainer (also described as a "true," "engagement," or "classic" retainer) is paid by a client to the lawyer in order to ensure the lawyer's availability during a specific period of time or for a specific matter. This type of retainer is earned when paid and immediately becomes property of the lawyer, regardless of whether the lawyer ever actually performs any services for the client. The second, a "security" retainer, secures payment for future services and expense, and must be deposited in a client trust account pursuant to paragraph (a). Funds in a security retainer remain the property of the client until applied for services rendered or expenses incurred. Any unapplied funds are

refunded to the client. Any written retainer agreement should clearly define the kind of retainer being paid. If the parties agree that the client will pay a security retainer, that term should be used in any written agreement, which should also provide that the funds remain the property of the client until applied for services rendered or expenses incurred and that the funds will be deposited in a client trust account. If the parties' intent is not evident, an agreement for a retainer will be construed as providing for a security retainer.

[3C] An advance payment retainer is a present payment to the lawyer in exchange for the commitment to provide legal services in the future. Ownership of this retainer passes to the lawyer immediately upon payment; and the retainer may not be deposited into a client trust account because a lawyer may not commingle property of a client with the lawyer's own property. However, any portion of an advance payment retainer that is not earned must be refunded to the client. An advance payment retainer should be used sparingly, only when necessary to accomplish a purpose for the client that cannot be accomplished by using a security retainer. An advance payment retainer agreement must be in a written agreement signed by the client that contains the elements listed in paragraph (c). An advance payment retainer is distinguished from a fixed fee (also described as a "flat" or "lump-sum" fee), where the lawyer agrees to provide a specific service (*e.g.*, defense of a criminal charge, a real estate closing, or preparation of a will or trust) for a fixed amount. Unlike an advance payment retainer, a fixed fee is generally not subject to the obligation to refund any portion to the client, although a fixed fee is subject, like all fees, to the requirement of Rule 1.5(a) that a lawyer may not charge or collect an unreasonable fee.

[3D] The type of retainer that is appropriate will depend on the circumstances of each case. The guiding principle in the choice of the type of retainer is protection of the client's interests. In the vast majority of cases, this will dictate that funds paid to retain a lawyer will be considered a security retainer and placed in a client trust account, pursuant to this Rule.

[4] Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule.

[6] Paragraphs (a), (f) and (g) requires that nominal or short-term funds belonging to clients or third persons be deposited in one or more IOLTA accounts as defined in paragraph (j)(2) and provides that the interest earned on any such accounts shall be submitted to the Lawyers Trust Fund of Illinois. The Lawyers Trust Fund of Illinois will disburse the funds so received to

qualifying organizations and programs to be used for the purposes set forth in its by-laws. The purposes of the Lawyers Trust Fund of Illinois may not be changed without the approval of the Supreme Court of Illinois. The decision as to whether funds are nominal or short-term shall be in the reasonable judgment of the depositing lawyer or law firm. Client and third-person funds that are neither nominal or short-term shall be deposited in separate, interest- or dividend-bearing client trust accounts for the benefit of the client as set forth in paragraphs (a) and (f).

[7] Paragraph (h) requires that lawyers maintain trust accounts only in financial institutions that have agreed to report trust account overdrafts to the ARDC. The trust account overdraft notification program is intended to provide early detection of problems in lawyers' trust accounts, so that errors by lawyers and/or banks may be corrected and serious lawyer transgressions pursued.

[8] Paragraph (i) applies when accumulated balances in an IOLTA account cannot be documented as belonging to an identifiable client or third party, or to the lawyer or law firm. This paragraph provides a mechanism for a lawyer to remove these funds from an IOLTA account when, in the lawyer's reasonable judgment, further efforts to account for them after a period of 12 months are not likely to be successful. This procedure facilitates the effective management of IOLTA accounts by lawyers; addresses situations where an IOLTA account becomes the responsibility of a lawyer's successor, law partner, or heir; and supports the provision of civil legal aid in Illinois.

The Lawyers Trust Fund of Illinois will publish instructions for lawyers remitting unidentified funds. Proceeds of unidentified funds received under paragraph (i) will be distributed to qualifying organizations and programs according to the purposes set forth in the by-laws of the Lawyers Trust Fund. When a lawyer learns that funds have been remitted in error or later identifies the owner of remitted funds, the lawyer may make a claim to the Lawyers Trust Fund for the return of the funds. After verification of the claim, the Lawyers Trust Fund will return the funds to the lawyer who then ensures the funds are restored to the owner.

Paragraph (i) relates only to unidentified funds, for which no owner can be ascertained. Unclaimed funds in client trust accounts−funds whose owner is known but have not been claimed—should be handled according to applicable statutes including the Uniform Disposition of Unclaimed Property Act (765 ILCS 1025 et seq.).

[9] Paragraph (j) provides definitions that pertain specifically to Rule 1.15. Paragraph (1) defines expansively the meaning of "funds," to include any form of money, including electronic fund transfers. Paragraph (2) defines an IOLTA account and paragraph (3) defines an eligible financial institution for purposes of the overdraft notification and IOLTA programs. Paragraph (4) defines "properly payable," a term used in the overdraft notification provisions in paragraph (h)(1). Paragraphs (5) through (8) define terms pertaining to IOLTA accounts. Paragraph (9) defines "unidentified funds" as that term is used in paragraph (i).

[10] Paragraph (k) applies only to the closing of real estate transactions and adopts the "good-funds" doctrine. That doctrine provides for the disbursement of funds deposited but not yet collected if the lawyer has already established an appropriate Real Estate Funds Account and otherwise fulfills all of the requirements contained in the Rule.

Adopted July 1, 2009, effective January 1, 2010; amended July 1, 2011, effective September 1, 2011; amended April 7, 2015, eff. July 1, 2015.

RULE 1.16: DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with

such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client Upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.

Refund of Unearned Fees

[10] See Comments [3B] through [3D] to Rule 1.15 and Rule 1.16(d).

Adopted July 1, 2009, effective January 1, 2010.

RULE 1.17: SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase, and the estate of a deceased lawyer or the guardian or authorized representative of a disabled lawyer may sell, a law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law in the geographic area in which the practice has been conducted;

(b) The entire practice is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court *in camera* information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Termination of Practice by the Seller

[2] The requirement that all of the private practice be sold is satisfied if the seller in good faith makes the entire practice available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a judiciary position.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice on the occasion of moving to another state. Some states, like Illinois, are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law. To also accommodate lawyers so situated, the Rule also permits the sale of the practice when the lawyer leaves the geographic area rather than the jurisdiction. In such cases, it is advisable for the parties' agreement to define the geographic area.

[5] Reserved.

Sale of Entire Practice

[6] The Rule requires that the seller's entire practice be sold. The prohibition against sale of less than an entire practice protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality

provisions of Model Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. See Rule 1.6(b)(7). Providing the purchaser access to information beyond that allowed by Rule 1.6(b)(7), such as the client's file, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[8] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered *in camera.*

[9] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16).

Applicability of the Rule

[13] This Rule includes the sale of a law practice of a deceased or disabled lawyer. Thus, the

seller may be represented by a nonlawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

RULE 1.18: DUTIES TO PROSPECTIVE CLIENT

(a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, or

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and that lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

Comment

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's consultations with a prospective client usually are limited in time and depth and leave both the prospective client

and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] Not all persons who communicate information to a lawyer are prospective clients. A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. See also Comment [4]. In contrast, a consultation does not occur if a person provides information to a lawyer in response to advertising that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client." Moreover, a person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a "prospective client."

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial consultation to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

[5] A lawyer may condition a consultation with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. See Rule 1.0(e) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

[6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

[7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in

Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened. See Rule 1.0(k) (requirements for screening procedures). Paragraph (d)(2) does not prohibit the screened lawyer from receiving a salary or partnership share established by independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[8] Reserved.

[9] For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see Rule 1.15.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

RULE 2.1: ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Adopted July 1, 2009, effective January 1, 2010.

Comment

Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

Adopted July 1, 2009, effective January 1, 2010.

RULE 2.2: RESERVED

RULE 2.3: EVALUATION FOR USE BY THIRD PERSONS

(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

Adopted July 1, 2009, effective January 1, 2010.

Comment

Definition

[1] An evaluation may be performed at the client's direction or when impliedly authorized in order to carry out the representation. See Rule 1.2. Such an evaluation may be for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a

prospective purchaser, or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

[2] A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this Rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duties Owed to Third Person and Client

[3] When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information

[4] The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations that are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances. In no circumstances is the lawyer permitted to knowingly make a false statement of material fact or law in providing an evaluation under this Rule. See Rule

4.1.

Obtaining Client's Informed Consent

[5] Information relating to an evaluation is protected by Rule 1.6. In many situations, providing an evaluation to a third party poses no significant risk to the client; thus, the lawyer may be impliedly authorized to disclose information to carry out the representation. See Rule 1.6(a). Where, however, it is reasonably likely that providing the evaluation will affect the client's interests materially and adversely, the lawyer must first obtain the client's consent after the client has been adequately informed concerning the important possible effects on the client's interests. See Rules 1.6(a) and 1.0(e).

Financial Auditors' Requests for Information

[6] When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

Adopted July 1, 2009, effective January 1, 2010.

RULE 2.4: LAWYER SERVING AS THIRD-PARTY NEUTRAL

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them and shall explain to them the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decisionmaker depends on the particular process that is either selected by the parties or mandated by a court.

[2] The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics.

[3] Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. The lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

[4] A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

[5] Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0(m)), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

Adopted July 1, 2009, effective January 1, 2010.

RULE 3.1: MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause,

but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good-faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good-faith argument on the merits of the action taken or to support the action taken by a good-faith argument for an extension, modification or reversal of existing law.

[3] The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.

Adopted July 1, 2009, effective January 1, 2010.

RULE 3.2: EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

Adopted July 1, 2009, effective January 1, 2010.

RULE 3.3: CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(m) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also the Comment to Rule 8.4 (b).

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

[5] Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be

inferred from the circumstances. See Rule 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] Although paragraph (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7].

Remedial Measures

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done–making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process

[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or

otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

***Ex Parte* Proceedings**

[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any *ex parte* proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an *ex parte* proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal

[15] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

Adopted July 1, 2009, effective January 1, 2010.

RULE 3.4: FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information. Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

[3] With regard to paragraph (b), it is not improper for a lawyer to pay a witness or prospective witness the reasonable expenses incurred in providing evidence or to compensate an expert witness on terms permitted by law. Expenses paid to a witness or prospective witness may include reimbursement for reasonable charges for travel to the place of a deposition or hearing or to the place of consultation with the lawyer and for reasonable related out-of-pocket costs, such as for hotel, meals, or child care, as well as compensation for the reasonable value of time spent attending a deposition or hearing or in consulting with the lawyer. An offer or payment of expenses may not be contingent on the content of the testimony or the outcome of the litigation, or otherwise prohibited by law.

[4] Paragraph (f) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also Rule 4.2.

Adopted July 1, 2009, effective January 1, 2010.

RULE 3.5: IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate *ex parte* with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment;

or

(d) engage in conduct intended to disrupt a tribunal.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the Illinois Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions. See Rule 8.4(f).

[2] During a proceeding a lawyer may not communicate *ex parte* with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, unless authorized to do so by law or court order.

[3] A lawyer may on occasion want to communicate with a juror or prospective juror after the

jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

[4] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 1.0(m).

Adopted July 1, 2009, effective January 1, 2010.

RULE 3.6: TRIAL PUBLICITY

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and would pose a serious and imminent threat to the fairness of an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii)the fact, time and place of arrest; and

(iv)the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent

publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

[2] Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4(c) requires compliance with such rules.

[3] The Rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know would pose a serious and imminent threat to the fairness of an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the Rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.

[4] Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to pose a serious and imminent threat to the fairness of an adjudicative proceeding, and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).

[5] There are, on the other hand, certain subjects that would pose a serious and imminent threat to the fairness of a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or

witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

[6] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Nonjury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

[7] Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

[8] See Rule 3.8(f) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings. *Cf. Devine v. Robinson*, 131 F. Supp. 2d 963 (N.D. Ill. 2001).

Adopted July 1, 2009, effective January 1, 2010.

RULE 3.7: LAWYER AS WITNESS

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

Advocate-Witness Rule

[2] The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

[3] To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in paragraphs (a)(1) through (a)(3). Paragraph (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a)(2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

[4] Apart from these two exceptions, paragraph (a)(3) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The conflict of interest principles stated in Rules 1.7, 1.9 and 1.10 have no application to this aspect of the problem.

[5] Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, paragraph (b) permits the lawyer to do so except in situations involving a conflict of interest.

Conflict of Interest

[6] In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with Rules 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer the representation involves a conflict of interest that requires compliance with Rule 1.7. This would be true even though the lawyer might not be prohibited by paragraph (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by paragraph (a)(3) might be precluded from doing so by Rule 1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent. In some cases, the lawyer will be precluded from seeking the client's consent. See Rule 1.7. See Rule 1.0(e) for the definition of "informed consent."

[7] Paragraph (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by paragraph (a). If, however, the testifying lawyer would also be disqualified by Rule 1.7 or Rule 1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by Rule 1.10 unless the client gives informed consent under the conditions stated in Rule 1.7.

Adopted July 1, 2009, effective January 1, 2010.

RULE 3.8: SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The duty of a public prosecutor is to seek justice, not merely to convict. The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence

about a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that pose a serious and imminent threat of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further reasonable investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

(i) A prosecutor's judgment, made in good faith, that evidence does not rise to the standards stated in paragraphs (g) or (h), though subsequently determined to have been erroneous, does not constitute a violation of this rule.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

Comment

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence.

[1A] The first sentence of Rule 3.8 restates an established principle. In 1924, the Illinois Supreme Court reversed a conviction for murder, noting that:

"The state's attorney in his official capacity is the representative of all the people, including

> the defendant, and it was as much his duty to safeguard the constitutional rights of the defendant as those of any other citizen." *People v. Cochran*, 313 Ill. 508, 526 (1924).

In 1935, the United States Supreme Court described the duty of a federal prosecutor in the following passage:

> "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor–indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Berger v. United States*, 295 U.S. 78, 88, 79 L. Ed. 1314, 1321, 55 S. Ct. 629, 633 (1935).

The first sentence of Rule 3.8 does not set an exact standard, but one good prosecutors will readily recognize and have always adhered to in the discharge of their duties. Specific standards, such as those in Rules 3.3, 3.4, 3.5, 3.6, the remaining paragraphs of Rule 3.8, and other applicable rules provide guidance for specific situations. Rule 3.8 is intended to remind prosecutors that the touchstone of ethical conduct is the duty to act fairly, honestly, and honorably.

[2] In Illinois, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons. Paragraph (c) does not apply, however, to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and silence.

[3] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[4] Paragraph (e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship.

[5] Paragraph (f) supplements Rule 3.6, which prohibits extrajudicial statements that pose a serious and imminent threat of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements which a prosecutor may make which comply with Rule 3.6(b) or 3.6(c). *Cf. Devine v. Robinson*, 131 F. Supp. 2d 963 (N.D. Ill. 2001).

[6] Like other lawyers, prosecutors are subject to Rules 5.1 and 5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph (f) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, paragraph (f) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

[7] When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person outside the prosecutor's jurisdiction was convicted of a crime that the person did not commit, paragraph (g) requires prompt disclosure to the court or other appropriate authority, such as the chief prosecutor where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, paragraph (g) requires the prosecutor to examine the evidence and undertake further reasonable investigation to determine whether the defendant is in fact innocent or make reasonable efforts to cause another appropriate authority to undertake the necessary investigation, and to promptly disclose the evidence to the court and, absent court-authorized delay, to the defendant. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant's counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.

[8] Under paragraph (h), once the prosecutor knows of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Necessary steps may include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

RULE 3.9: ADVOCATE IN NONADJUDICATIVE PROCEEDINGS

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), and 3.4(a) through (c).

Adopted July 1, 2009, effective January 1, 2010; amended November 23, 2009, effective January 1, 2010.

Comment

[1] In representation before bodies such as legislatures, municipal councils, and executive and

administrative agencies acting in a rulemaking or policymaking capacity, lawyers present facts, formulate issues and advance argument in the matters under consideration. The decisionmaking body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body must deal with it honestly and in conformity with applicable rules of procedure. See Rules 3.3(a) through (c), and 3.4(a) through (c).

[2] Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

[3] This Rule only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer's client is presenting evidence or argument. It does not apply to representation of a client in otherwise permitted lobbying activities, a negotiation or other bilateral transaction with a governmental agency, or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income-tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation in such matters is governed by Rules 4.1 through 4.4.

Adopted July 1, 2009, effective January 1, 2010; amended November 23, 2009, effective January 1, 2010.

RULE 4.1: TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Adopted July 1, 2009, effective January 1, 2010.

Comment

Misrepresentation

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Statements of Fact

[2] This Rule refers to statements of fact as well as law. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

Crime or Fraud by Client

[3] Under Rule 1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6.

Adopted July 1, 2009, effective January 1, 2010.

RULE 4.2: COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation.

[2] This Rule applies to communications with any person who is represented by counsel, including counsel in a limited scope representation pursuant to Rule 1.2(c), concerning the matter

to which the communication relates.

[3] The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

[4] This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so.

[5] Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

[6] A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

[8] The prohibition on communications with a represented person only applies in

circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Rule 1.0(f). Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

[8A] For purposes of this Rule, when a person is being represented on a limited basis under Rule 1.2(c), a lawyer is only deemed to know that the person is represented by another lawyer, and the subject of that representation, upon receipt of (i) a proper Notice of Limited Scope Appearance under Supreme Court Rule 13(c)(6), or (ii) with respect to a matter not involving court proceedings, written notice advising that the client is being represented by specified counsel with respect to an identified subject matter and time frame. A lawyer is permitted to communicate with a person represented under Rule 1.2(c) outside the subject matter or time frame of the limited scope representation.

[9] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 4.3.

Adopted July 1, 2009, effective January 1, 2010; amended June 14, 2013, eff. July 1, 2013.

RULE 4.3: DEALING WITH UNREPRESENTED PERSON

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see Rule 1.13(f).

[2] The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may

depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

Adopted July 1, 2009, effective January 1, 2010.

RULE 4.4: RESPECT FOR RIGHTS OF THIRD PERSONS

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

Comment

[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

[2] Paragraph (b) recognizes that lawyers sometimes receive a document or electronically stored information that was mistakenly sent or produced by opposing parties or their lawyers. A document or electronically stored information is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted. If a lawyer knows that such a document or electronically stored information was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the document or electronically stored information, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document or electronically stored information has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document or electronically stored information that the lawyer knows may have been inappropriately obtained by the sending person. For purposes of this Rule, ‘‘document or

electronically stored information'' includes, in addition to paper documents, email and other forms of electronically stored information, including embedded data (commonly referred to as "metadata"), that is subject to being read or put into readable form. Metadata in electronic documents creates an obligation under this Rule only if the receiving lawyer knows that the metadata was inadvertently sent to the receiving lawyer.

[3] Some lawyers may choose to return a document or delete electronically stored information unread, for example, when the lawyer learns before receiving it that it was inadvertently sent. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document or delete electronically stored information is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

RULE 5.1: RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over

the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4(a).

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2(a).

Adopted July 1, 2009, effective January 1, 2010.

RULE 5.2: RESPONSIBILITIES OF A SUBORDINATE LAWYER

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

Adopted July 1, 2009, effective January 1, 2010.

RULE 5.3: RESPONSIBILITIES REGARDING NONLAWYER ASSISTANCE

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the

lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

Comment

[1] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters act in a way compatible with the professional obligations of the lawyer. See Comment [6] to Rule 1.1 and Comment [1] to Rule 5.1. Paragraph (b) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

Nonlawyers Within the Firm

[2] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Nonlawyers Outside the Firm

[3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner

that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1, 1.2, 1.4, 1.6, 5.4(a), and 5.5(a). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

[4] Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer. See Rule 1.2. When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

RULE 5.4: PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[2] This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also Rule 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

Adopted July 1, 2009, effective January 1, 2010.

RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out

of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction or admitted or otherwise authorized to practice in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

(e) For purposes of paragraph (d), the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed *pro se*. See Supreme Court Rule 137(e) (lawyer may help draft a pleading, motion or other paper filed by a *pro* se party). See also Supreme Court Rule 13(c)(6) (lawyer may make a limited scope appearance in a civil proceeding on behalf of a *pro se* party).

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice

generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

[5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a U.S. or foreign lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. Paragraph (d) also applies to lawyers admitted or otherwise authorized to practice in a foreign jurisdiction. The word "admitted" in paragraphs (c), (d) and (e) contemplates that the lawyer is authorized to practice in the other jurisdiction and excludes a lawyer who while technically admitted is not authorized to practice.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents.

Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally uniform, foreign, or international law.

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States or a foreign jurisdiction, and is not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law. Pursuant to paragraph (c) of this Rule, a lawyer admitted in any U.S. jurisdiction may also provide legal services in this jurisdiction on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another United States or foreign jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law

generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a U.S. or foreign lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education. See Illinois Supreme Court Rules 706(f), (g), 716, and 717 concerning requirements for house counsel and legal service program lawyers admitted to practice in other jurisdictions who wish to practice in Illinois.

[18] Paragraph (d)(2) recognizes that a U.S. or foreign lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services in this jurisdiction is governed by Rules 7.1 to 7.5.

[22] Paragraph (e) recognizes the importance of the structure and procedures of the legal system in a foreign jurisdiction in assuring that a foreign lawyer is qualified to practice in Illinois. Application of paragraph (e) requires recognition that structure and procedures vary among foreign jurisdictions. Where members of the profession in the foreign jurisdiction are admitted or authorized to practice as lawyers or counselors at law or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or a public authority, paragraph (e) is satisfied. Where the legal system does not have such structure and procedures, other attributes of the system must be considered to determine whether they supply assurances of an appropriate legal background. In addition, a foreign lawyer must satisfy the requirements of Illinois Supreme Court Rule 716 to be admitted as house counsel.

Adopted July 1, 2009, effective January 1, 2010; amended June 14, 2013, eff. July 1, 2013; amended Oct. 15, 2015, eff. Jan. 1, 2016.

RULE 5.6: RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

[3] This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

Adopted July 1, 2009, effective January 1, 2010.

RULES 5.7 & 6.1: RESERVED.

RULE 6.2: ACCEPTING APPOINTMENTS

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing *pro bono* publico service. See Preamble. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

Adopted July 1, 2009, effective January 1, 2010.

RULE 6.3: MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

A lawyer may serve as a director, officer or member of a not-for-profit legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] Lawyers should be encouraged to support and participate in not-for-profit legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby

have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

Adopted July 1, 2009, effective January 1, 2010.

RULE 6.4: LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also Rule 1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefitted.

Adopted July 1, 2009, effective January 1, 2010.

RULE 6.5: NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICES PROGRAMS

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services–such as advice or the completion of legal forms–that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, *e.g.*, Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and

1.10 become applicable.

Adopted July 1, 2009, effective January 1, 2010.

RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

RULE 7.2: ADVERTISING

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

(c) Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a

similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. But see Rule 7.3(a) for the prohibition against a solicitation through a real-time electronic exchange initiated by the lawyer.

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Paying Others to Recommend a Lawyer

[5] Except as permitted under paragraphs (b)(1)-(b)(4), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 for the duties of lawyers and law firms with respect to the conduct of nonlawyers; Rule 8.4(a) for the duty to avoid violating the Rules through the acts of another.

[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit lawyer referral service.

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as

would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

RULE 7.3: SOLICITATION OF CLIENTS

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment; or

(3) the solicitation seeks representation of the respondent in a case brought under any law providing for an *ex parte* protective order for personal protection when the solicitation is made prior to the respondent having been served with the order.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016; amended July 17, 2020, eff. immediately.

Comment

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[2] There is a potential for abuse when a solicitation involves direct in-person, live telephone or real-time electronic contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] This potential for abuse inherent in direct in-person, live telephone or real time electronic solicitation justifies its prohibition, particularly since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. These forms of communications and solicitations make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to direct in-person, telephone or real-time electronic persuasion that may overwhelm a person's judgment.

[4] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic contact can be disputed and

may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[6] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b).

[7] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[8] The requirement in Rule 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[9] Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the

lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See 8.4(a).

[10] Paragraph (b)(3) is meant to address lawyers' contact with prospective clients at a point in an *ex parte* proceeding when contact poses a substantial risk of physical harm to the party seeking the protective order. Examples of laws providing for *ex parte* protective orders for personal protection include, inter alia, the Illinois Domestic Violence Act of 1986 (750 ILCS 60/101 *et seq*.), the Stalking No Contact Order Act (740 ILCS 21/1 *et seq*.), the Civil No Contact Order Act (740 ILCS 22/101 *et seq*.), and relevant sections of the Illinois Code of Criminal Procedure (725 ILCS 5/112A-1 *et seq.*).

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016; amended July 17, 2020, eff. immediately.

RULE 7.4: COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(b) The Supreme Court of Illinois does not recognize certifications of specialties in the practice of law, nor does it recognize certifications of expertise in any phase of the practice of law by any agency, governmental or private, or by any group, organization or association. A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

(c) Except when identifying certificates, awards or recognitions issued to him or her by an agency or organization, a lawyer may not use the terms "certified,'' "specialist,'' "expert,'' or any other, similar terms to describe his qualifications as a lawyer or his qualifications in any subspecialty of the law. If such terms are used to identify any certificates, awards or recognitions issued by any agency, governmental or private, or by any group, organization or association, the reference must meet the following requirements:

(1) the reference must be truthful and verifiable and may not be misleading in violation of Rule 7.1;

(2) the reference must state that the Supreme Court of Illinois does not recognize certifications of specialties in the practice of law and that the certificate, award or recognition is not a requirement to practice law in Illinois.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] Paragraph (a) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate.

[2] Paragraph (b) states the general policy of the Supreme Court of Illinois not to recognize certifications of specialties or expertise, except that it recognizes that admission to patent practice before the Patent and Trademark Office confers a long-established and well-recognized status. The omission of reference to lawyers engaged in trademark or admiralty practice that were contained in the prior rule is not intended to suggest that such lawyers may not use terms such as "Trademark Lawyer" or "Admiralty" to indicate areas of practice as permitted by paragraph (a).

[3] Paragraph (c) permits a lawyer to state that the lawyer is certified, is a specialist in a field of law, or is an "expert" or any other similar term, only if certain requirements are met.

Adopted July 1, 2009, effective January 1, 2010.

RULE 7.5: FIRM NAMES AND LETTERHEADS

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a

trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.

[2] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

Adopted July 1, 2009, effective January 1, 2010.

RULE 8.1: BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by these Rules or by law.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who

is the subject of a disciplinary inquiry or proceeding, is governed by the Rules applicable to the client-lawyer relationship, including Rule 1.6 and, in some cases, Rule 3.3.

Adopted July 1, 2009, effective January 1, 2010.

RULE 8.2: JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Adopted July 1, 2009, effective January 1, 2010.

RULE 8.3: REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of Rule 8.4(b) or Rule 8.4(c) shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by the attorney-client privilege or by law or information gained by a lawyer or judge while participating in an approved lawyers' assistance program or an intermediary program approved by a circuit court in which nondisciplinary complaints against judges or lawyers can be referred.

(d) A lawyer who has been disciplined as a result of a lawyer disciplinary action brought before any body other than the Illinois Attorney Registration and Disciplinary Commission shall report that fact to the Commission.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. See *In re Himmel*, 125 Ill. 2d 531 (1988). Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve disclosure of information protected by the attorney-client privilege or by law. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. A report should be made to the Illinois Attorney Registration and Disciplinary Commission unless some other agency is more appropriate in the circumstances. See *Skolnick v. Altheimer & Gray*, 191 Ill. 2d 214 (2000). Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question or to a lawyer consulted in a professional capacity by another lawyer on whether the inquiring lawyer has a duty to report a third party lawyer's professional misconduct. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers' or judges' assistance program or an approved intermediary program. In these circumstances, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment or assistance through such programs. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. See also Comment [19] to Rule 1.6.

[6] Rule 8.3(d) requires a lawyer to bring to the attention of the Illinois Attorney Registration and Disciplinary Commission any disciplinary sanction imposed by any other body against that lawyer. The Rule must be read in conjunction with Illinois Supreme Court Rule 763.

Adopted July 1, 2009, effective January 1, 2010.

RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(d) engage in conduct that is prejudicial to the administration of justice.

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law. Nor shall a lawyer give or lend anything of value to a judge, official, or employee of a tribunal, except those gifts or loans that a judge or a member of the judge's family may receive under Rule 65(C)(4) of the Illinois Code of Judicial Conduct. Permissible campaign contributions to a judge or candidate for judicial office may be made only by check, draft, or other instrument payable to or to the order of an entity that the lawyer reasonably believes to be a political committee supporting such judge or candidate. Provision of volunteer services by a lawyer to a political committee shall not be deemed to violate this paragraph.

(g) present, participate in presenting, or threaten to present criminal or professional disciplinary charges to obtain an advantage in a civil matter.

(h) enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or pursue any complaint before the Illinois Attorney Registration and Disciplinary Commission.

(i) avoid in bad faith the repayment of an education loan guaranteed by the Illinois Student Assistance Commission or other governmental entity. The lawful discharge of an education loan in a bankruptcy proceeding shall not constitute bad faith under this paragraph, but the discharge shall not preclude a review of the lawyer's conduct to determine if it constitutes bad faith.

(j) violate a federal, state or local statute or ordinance including, but not limited to, the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.*) that prohibits discrimination based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status by conduct that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including: the seriousness of the act; whether the lawyer knew that the act was prohibited by statute or ordinance; whether the act was part of a pattern of prohibited conduct; and whether the act was committed in connection with the lawyer's professional activities. No charge of professional misconduct may be brought pursuant to this paragraph until a court or

administrative agency of competent jurisdiction has found that the lawyer has engaged in an unlawful discriminatory act, and the finding of the court or administrative agency has become final and enforceable and any right of judicial review has been exhausted.

(k) if the lawyer holds public office:

(1) use that office to obtain, or attempt to obtain, a special advantage in a legislative matter for a client under circumstances where the lawyer knows or reasonably should know that such action is not in the public interest;

(2) use that office to influence, or attempt to influence, a tribunal to act in favor of a client; or

(3) represent any client, including a municipal corporation or other public body, in the promotion or defeat of legislative or other proposals pending before the public body of which such lawyer is a member or by which such lawyer is employed.

Adopted July 1, 2009, effective January 1, 2010; amended May 25, 2022, eff. immediately.

Comment

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good-faith belief

that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good-faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

Adopted July 1, 2009, effective January 1, 2010.

RULE 8.5: DISCIPLINARY AUTHORITY; CHOICE OF LAW

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Adopted July 1, 2009, effective January 1, 2010.

Comment

Disciplinary Authority

[1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings may advance the purposes of this Rule, subject always to the need to avoid unjust results. For purposes of reciprocal discipline, suspension of the privilege to provide legal services on a temporary basis, pursuant to Rule 5.5(c) shall not necessarily be

considered equivalent to suspension of licensure for a lawyer admitted to practice in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule. With respect to conflicts of interest, in determining a lawyer's reasonable belief under paragraph (b)(2), a written agreement between the lawyer and client that reasonably specifies a particular jurisdiction as within the scope of that paragraph may be considered if the agreement was obtained with the client's informed consent confirmed in writing.

[6] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this Rule, identify the same governing ethics rules. They should take all

appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[7] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

Adopted July 1, 2009, effective January 1, 2010; amended Oct. 15, 2015, eff. Jan. 1, 2016.

Article IX. Child Custody or Allocation of Parental Responsibilities Proceedings

Part A. Rules of General Application to Child Custody or Allocation of Parental Responsibilities Proceedings

Rule 900. Purpose and Scope

(a) Purpose. Trial courts have a special responsibility in cases involving the care and custody or allocation of parental responsibilities of children. When a child is a ward of the court, the physical and emotional well-being of the child is literally the business of the court. The purpose of this article (Rules 900 *et seq.*) is to expedite cases affecting the custody or allocation of parental responsibilities of a child, to ensure the coordination of custody or allocation of parental responsibilities matters filed under different statutory Acts, and to focus child custody or allocation of parental responsibilities proceedings on the best interests of the child, while protecting the rights of other parties to the proceedings.

(b)(1) Definitions. For the purposes of this article, "child custody or allocation of parental responsibilities proceeding" means an action affecting child custody or allocation of parental responsibilities, visitation, or parenting time. "Relocation" means an action involving relocation of a minor child pursuant to section 609.2 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/609). "Child" means a person who has not attained the age of 18.

(b)(2) Part A. *Scope*. Rules 900 through 920, except as stated therein, apply to all child custody or allocation of parental responsibilities proceedings initiated under article II, III, or IV of the Juvenile Court Act of 1987, the Illinois Marriage and Dissolution of Marriage Act, the Uniform Child Custody Jurisdiction and Enforcement Act, the Illinois Parentage Act of 2015, the Illinois Domestic Violence Act of 1986 and article 112A of the Code of Criminal Procedure of 1963, and guardianship matters involving a minor under article XI of the Probate Act of 1975.

(b)(3) Part B. *Scope of Rules 921 through 940.* Rules 921 through 940 apply to allocation of parental responsibilities proceedings initiated under the Illinois Marriage and Dissolution of Marriage Act, and the Illinois Parentage Act of 2015.

(b)(4) Part C. *Scope of Rule 942.* Rule 942 applies to child custody proceedings under articles II, III, and IV of the Juvenile Court Act of 1987.

(c) Applicability of Other Rules. Applicable provisions of articles I and II of these rules shall continue to apply in child custody or allocation of parental responsibilities proceedings except as noted in this article.

Adopted February 10, 2006, effective July 1, 2006; amended July 1, 2013, eff. Sept. 1, 2013; amended Mar. 8, 2016, eff. immediately.

Committee Comments
(Revised March 8, 2016)

Special Supreme Court Committee on Child Custody Issues

Rule 900 emphasizes the importance of child custody or allocation of parental responsibilities proceedings and highlights the purpose of the rules that follow, which is to ensure that child custody and allocation of parental responsibilities proceedings are expeditious, child-focused and fair to all parties.

The rules in the 900 series were written by the Special Supreme Court Committee on Child Custody Issues. The Special Committee was appointed shortly after our Supreme Court adopted the rules promulgated by the Special Supreme Court Committee on Capital Cases. See Rule 43 (judicial seminars on capital cases), Rule 411 (applicability of discovery rules to capital sentencing hearings), Rule 412(c) (State identification of material that may be exculpatory or mitigating), Rule 417 (DNA evidence), and Rules 701(b) and 714 (Capital Litigation Bar). These rules were designed to improve pretrial and trial procedures in capital cases. In appointing the Special Committee on Child Custody Issues, our Supreme Court indicated its strong desire to address problems which were apparent in the most significant cases courts must decide—those involving child custody or allocation of parental responsibilities.

Our Supreme Court and legislature have repeatedly stressed the need for child custody or allocation of parental responsibilities proceedings to be handled expeditiously, with great emphasis on the best interest of the child. As pointed out by our Supreme Court in *In re D.F.*, 208 Ill. 2d 223, 241 (2003), the Juvenile Court Act of 1987 (705 ILCS 405/2–14(a)), sets forth the "legislature's stated policy and purpose of expediting juvenile court proceedings and seeking permanency for children in a 'just and speedy' manner." Similarly, the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/606(a)) provides: "Custody proceedings shall receive priority in being set for hearing." As explained by our Supreme Court in *In re A.W.J.*, 197 Ill. 492, 497-98 (2001): "Like proceedings under the Adoption Act (750 ILCS 50/1 *et seq.* (West 1994)) and the Juvenile Court Act of 1987 (705 ILCS 405/2–1 *et seq.* (West 1994)) custody proceedings under the Marriage and Dissolution Act are guided by the overriding lodestar of the best interests of the child or children involved."

The Special Committee noted that proceedings under the Adoption Act "shall receive priority over other civil cases in being set for hearing," and that appealable orders under the Adoption Act "shall be prosecuted and heard on an expedited basis." 750 ILCS 50/20.

The Special Committee also noted that, effective July 1, 2004, our Supreme Court adopted Rule 306 A, Expedited Appeals in Child Custody Cases. Rule 306 A (f) provides that "Except for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal." Rule 306 A (h) provides in part: "Requests for continuance are disfavored and shall be granted only for compelling circumstances."

Paragraph (b)(1) defines "Child custody or allocation of parental responsibilities proceedings" broadly for the purposes of the rules. The broad definition is important, because the need to expedite custody and allocation of parental responsibilities decisions applies to all types of custody and allocation of parental responsibilities cases and coordination of these cases is essential.

The rest of Rule 900(b) sets out the scope of the Committee's other rule proposals.

Paragraph (b)(2) explains that Part A of the rules, consisting of Rules 900 through 920, is applicable to all child custody and allocation of parental responsibilities proceedings, except as noted. Rules 909 through 920 are reserved.

Paragraph (b)(3) explains that Part B of the rules, consisting of Rules 921 through 940, deals with dissolution of marriage and paternity cases. Rules 925 through 940 are reserved.

Paragraph (b)(4) explains that Part C of the rules, consisting only of Rule 942, Court Family Conferences, applies to nondelinquency juvenile cases.

Other Supreme Court rules will continue to apply in child custody or allocation of parental responsibilities proceedings unless noted.

The 900 series of rules does not address proceedings arising under the Adoption Act (750 ILCS 50/1 *et seq.*). The Special Committee believes that adoption is qualitatively different from the child custody and allocation of parental responsibilities proceedings addressed in the Rule 900 series. Consequently, any rule changes applicable to proceedings under the Adoption Act will be addressed separately.

The Illinois Marriage and Dissolution of Marriage Act, Pub. Act 99-90 (eff. Jan. 1, 2016) (amending 750 ILCS 5/101 *et seq.*), has changed the terms "Custody," "Visitation" (as to parents) and "Removal" to "Allocation of Parental Responsibilities," "Parenting Time" and "Relocation." These rules are being amended to reflect those changes. The rules utilize both "custody" and "allocation of parental responsibilities" in recognition that some legislative enactments covered by the rules utilize the term "custody" while the Illinois Marriage and Dissolution of Marriage Act and the Illinois Parentage Act of 2015 utilize the term "allocation of parental responsibilities." The Special Committee has attempted to adhere to the usage found in the applicable legislative enactments.

Rule 901. General Rules

(a) Expedited Hearings. Child custody and allocation of parental responsibilities proceedings shall be scheduled and heard on an expedited basis. Hearings in child custody and allocation of parental responsibilities proceedings shall be held in strict compliance with applicable deadlines established by statute or by this article.

(b) Setting of Hearings. Hearings in child custody and allocation of parental responsibilities

proceedings shall be set for specific times and state whether parties shall appear in person or remotely, including by telephone or video conference. At each hearing, the next hearing shall be scheduled, and the parties shall be notified of the date and time of the next hearing and whether the parties shall appear in person or remotely, including by telephone or video conference. Hearings rescheduled following a continuance shall be set for the earliest possible date.

(c) Continuances. Parties, witnesses and counsel shall be held accountable for attending hearings in child custody and allocation of parental responsibilities proceedings. Continuances shall not be granted in child custody and allocation of parental responsibilities proceedings except for good cause shown and may be granted if the continuance is consistent with the health, safety and best interests of the child. The party requesting the continuance and the reasons for the continuance shall be documented in the record.

(d) In any child custody, allocation of parental responsibilities, or relocation proceeding taken under advisement by the trial court, the trial judge shall render its decision as soon as possible but not later than 60 days after the completion of the trial or hearing.

(e) Appeals. Appeals from orders entered in child custody and allocation of parental responsibilities proceedings shall be pursuant to the applicable civil appeals rules. All such proceedings shall be expedited according to Rules 311(a) and 315(i).

Adopted February 10, 2006, effective July 1, 2006; amended February 26, 2010, effective immediately; amended Mar. 8, 2016, eff. immediately; amended Apr. 3, 2018, eff. July 1, 2018; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Committee Comments
(Revised March 8, 2016)

Special Supreme Court Committee on Child Custody Issues

Rule 901 includes procedures that are designed and proven to expedite child custody and allocation of parental responsibilities proceedings.

Paragraph (a) requires strict compliance with statutory and rule based deadlines for child custody and allocation of parental responsibilities proceedings.

Paragraphs (b) and (c) concerning the setting of hearings and limitations on continuances should help to significantly reduce delays in child custody and allocation of parental responsibilities proceedings.

Paragraph (d) requires timely disposition of cases taken under advisement by the trial court.

Rule 902. Pleadings

(a) Complaint or Petition. The initial complaint or petition in a child custody or allocation of parental responsibilities proceeding shall state (1) whether the child involved is the subject of any other child custody or allocation of parental responsibilities proceeding pending before another

division of the circuit court, or another court or administrative body of Illinois or of any other state, an Indian tribe, or a foreign country and (2) whether any order affecting the custody, allocation of parental responsibilities, visitation, or parenting time of the child has been entered by the circuit court or any of its divisions, or by another court or administrative body of Illinois or of any other state, an Indian tribe, or a foreign country. If any child custody or allocation of parental responsibilities proceeding is pending with respect to the child, or any order has been entered with respect to the custody, allocation of parental responsibilities, visitation, or parenting time of the child, the initial complaint or petition shall identify the tribunal involved and the parties to the action.

(b) Verification of Initial Complaint or Petition. The plaintiff or petitioner in a child custody or allocation of parental responsibilities proceeding shall verify the pleadings required by paragraph (a) of this rule. If the plaintiff or petitioner is a public agency, the verification shall be on information and belief of the attorney filing the pleading and shall state that reasonable efforts were made to obtain all information relevant to the matters verified.

(c) Answer or Appearance. In a child custody or allocation of parental responsibilities proceeding the defendant's (or respondent's) answer, if required, shall include a verified disclosure of any relevant information known to the defendant (or respondent) regarding any pending proceedings or orders described in paragraph (a) of this rule. Any defendant or respondent who appears but is not required to file an answer in the child custody or allocation of parental responsibilities matter shall be questioned under oath by the court at the party's first appearance before the court regarding any proceedings or orders described in paragraph (a) of this rule.

(d) Continuing Duty. The parties have a continuing duty to disclose information relating to other pending child custody or allocation of parental responsibilities proceedings or any existing orders affecting the custody, allocation of parental responsibilities, visitation, or parenting time of the child, and shall immediately disclose to the court and the other parties to the proceeding any such information obtained after the initial pleadings, answer or appearance.

Adopted February 10, 2006, effective July 1, 2006; amended Mar. 8, 2016, eff. immediately.

Committee Comments
(Revised March 8, 2016)

Special Supreme Court Committee on Child Custody Issues

The purpose of Rule 902 is to ensure that the trial court is aware of all custody and allocation of parental responsibilities proceedings and orders relating to the child who is before the court. The Special Committee found that child custody and allocation of parental responsibilities, visitation and parenting time may be the subject of multiple proceedings and orders. Rule 902 addresses the problem of multiple proceedings that may occur intrastate and intra-circuit. Multiple proceedings may arise intra-circuit when parties file for relief under different statutory provisions (*e.g.*, an abuse case and a simultaneous guardianship case).

Paragraph (a) provides that the initial pleading of a party to a custody or allocation of parental responsibilities proceeding must include information regarding other pending custody or allocation of parental responsibilities proceedings and prior orders relating to custody, allocation of parental responsibilities, visitation or parenting time. Information in paragraph (a) may be submitted to the court in a joint filing including the information required by section 209(a) of the Uniform Child-Custody and Enforcement Act (750 ILCS 36/209(a)).

Paragraph (b) requires that the pleadings required by paragraph (a) of this rule be verified by the plaintiff or petitioner in child custody or allocation of parental responsibilities proceedings.

Paragraph (c) provides that parties not required to file pleadings may be questioned by the trial court regarding other pending matters and prior orders.

Paragraph (d) provides that all parties have a continuing duty to disclose such matters to the court.

Requiring disclosure of other proceedings and orders should minimize the possibility of inconsistent child custody or allocation of parental responsibilities orders and help to prevent forum shopping.

Rule 903. Assignment and Coordination of Cases

Whenever possible and appropriate, all child custody and allocation of parental responsibilities proceedings relating to an individual child shall be conducted by a single judge. Each judicial circuit shall adopt a rule or order providing for assignment and coordination of child custody and allocation of parental responsibilities proceedings. Assignments in child custody and allocation of parental responsibilities proceedings shall be in accordance with the circuit rule or order then in force.

Adopted February 10, 2006, effective July 1, 2006; amended Mar. 8, 2016, eff. immediately.

Committee Comments
(Revised March 8, 2016)

Special Supreme Court Committee on Child Custody Issues

Rule 903 encourages the assignment of all custody and allocation of parental responsibilities proceedings concerning a child to a single judge. The rule does not mandate consolidation of child custody or allocation of parental responsibilities proceedings, because consolidation may be inadvisable in certain cases. Moreover, in some counties mandatory consolidation may be impracticable because of the arrangement of courtrooms and facilities.

Rule 903 encourages the consolidation of cases by requiring that the judicial circuits adopt rules or orders concerning the assignment and coordination of child custody and allocation of parental responsibilities proceedings, and by providing that the assignment of child custody and allocation of parental responsibilities proceedings will be in accordance with those rules.

Rule 904. Case Management Conferences

In child custody proceedings other than cases under articles II, III and IV of the Juvenile Court Act of 1987, and cases under the Illinois Marriage and Dissolution of Marriage Act and the Illinois Parentage Act of 1984 provided for under Part B of this article (see Rule 923), an initial case management conference pursuant to Rule 218 shall be held not later than 90 days after the petition or complaint has been served upon the respondent. If not previously resolved, the court shall address the appointment of a guardian *ad litem* or counsel for the child and counsel for any indigent party entitled to the assistance of appointed counsel at the initial case management conference.

Adopted February 10, 2006, effective July 1, 2006.

Committee Comments
Special Supreme Court Committee on Child Custody Issues

Case management conferences provide an effective way for the trial court to simplify issues and expedite cases. Rule 904 provides that an initial case management conference will be held within 90 days after the petition or compliant has been served upon the respondent in child custody proceedings not covered by other rules.

Special rules regarding conferences are included in Parts B and C of the Rule 900 series: Rule 923 addresses case management conferences in dissolution of marriage and paternity cases. Rule 942 authorizes the use of Court Family Conferences in abuse and neglect cases.

Rule 905. Mediation

(a) Each judicial circuit shall establish a program to provide mediation for cases involving the custody or allocation of parental responsibilities of a child or relocation of a child or visitation or parenting time issues (whether or not the parties have been married). In addition to the minimum requirements set forth in subparagraph (b)(2) of Rule 99, local circuit court rules for mediation in child custody, allocation of parental responsibilities, relocation, visitation, and parenting time cases shall address: (i) mandatory training for mediators; (ii) limitation of the mediation program to child custody, allocation of parental responsibilities, relocation, visitation, and parenting time issues; (iii) (unless otherwise provided for in this article) standards to determine which child custody, allocation of parental responsibilities, relocation, visitation, and parenting time issues should be referred to mediation and the time for referral; and (iv) excuse from referral to mediation if the court determines an impediment to mediation exists. The immunity and approval requirements of subparagraph (b)(1) of Rule 99 shall apply to mediation programs for child custody, allocation of parental responsibilities, relocation, visitation, and parenting time matters.

(b) Each judicial circuit shall establish a program to provide mediation for dissolution of marriage and paternity cases involving the custody, allocation of parental responsibilities of a child, relocation of a child, visitation or parenting time issues (whether or not the parties have been married). In addition to the minimum requirements set forth in subparagraph (b)(2) of Rule 99,

local circuit court rules for mediation in dissolution of marriage and paternity cases shall address: (i) mandatory expertise requirements of a mediator; (ii) mandatory training for mediators; (iii) limitation of the mediation program to child custody, allocation of parental responsibilities, relocation, visitation, and parenting time issues; and (iv) referral of child custody, allocation of parental responsibilities, relocation, visitation, and parenting time issues to mediation, pursuant to Rule 923(a)(3), unless the court determines an impediment to mediation exists. The immunity and approval requirements of subparagraph (b)(1) of Rule 99 shall apply to mediation programs for child custody, allocation of parental responsibilities, relocation, visitation, and parenting time matters. In cases where a litigant can only communicate in a language other than English, the court will make a good-faith effort to provide a mediator, and a *pro bono* attorney where applicable, and/or an interpreter who speaks the language of the litigant who needs English assistance.

(c) Every judicial circuit shall file a quarterly report with the Administrative Office of the Illinois Courts setting out the number of custody, allocation of parental responsibilities, visitation, parenting time, and relocation cases referred to mediation, the number of custody, allocation of parental responsibilities, visitation, parenting time, and relocation cases where mediation was referred but did not proceed, the number of cases referred on a *pro bono* basis, the number of cases where mediation proceeded remotely for any of the case participants who appeared remotely, the number of cases where there was a full settlement, the number of cases where there was a partial settlement, and the percentage of cases wherein the parties were satisfied or unsatisfied with the process. Every judicial circuit shall require the completion of a mediation report filled out by a mediator on every custody, allocation of parental responsibilities, visitation, parenting time, and relocation case referred to mediation as well as the parties' evaluation of the mediation on forms prescribed by the Administrative Office of the Illinois Courts. The information contained in the mediator and parties' evaluation reports shall remain confidential and shall only be utilized for administrative and statistical purposes as well as the court's review of the efficacy of the mediation program.

(d) In addition to meeting the requirements of Rule 905(a), (b), and (c), local circuit rules may also impose other requirements as deemed necessary by the individual circuits.

Adopted February 10, 2006, effective January 1, 2007; amended May 19, 2006, effective January 1, 2007; amended July 1, 2013, eff. Sept. 1, 2013; amended Mar. 8, 2016, eff. immediately; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Committee Comments

(Revised March 8, 2016)

Special Supreme Court Committee on Child Custody Issues

The Committee believes mediation can be useful in nearly all contested custody or allocation of parental responsibilities proceedings. Mediation can resolve a significant portion of custody and allocation of parental responsibilities disputes and often has a positive impact even when these

issues are not resolved. The process of mediation focuses the parties' attention on the needs of the child and helps parties to be realistic in their expectations regarding custody or allocation of parental responsibilities.

Many counties and judicial circuits have had mandatory mediation programs in place in their domestic relations courts for years. Cook County and Du Page County have utilized mandatory mediation programs for more than a decade. To date, these mandatory mediation programs have been implemented by the judicial circuits under the auspices of Rule 99, Mediation Programs.

Rule 905 requires each judicial circuit to establish a mediation program for child custody and allocation of parental responsibilities proceedings. Local circuit court rules will address the specifics of the mediation programs. The Cook County model for mediation programs, which provides county-employed mediators at no cost to the parties, may not be financially or administratively feasible for every circuit. Alternatively, some circuits have required approved mediators to mediate a certain number of reduced fee or *pro bono* cases per year as identified by the court. The individual judicial circuits may implement rules which are particularly appropriate for them, including provisions specifying responsibility for mediation costs.

Paragraph (a) applies to cases involving custody, allocation of parental responsibilities, visitation, or parenting time issues, other than those arising in dissolution of marriage and paternity cases. It requires local circuit court rules to address mandatory training for mediators and limits the mediation program to issues involving child custody, allocation of parental responsibilities, visitation, and parenting time. Paragraph (a) also requires local circuit court rules to set standards to use in determining which child custody, allocation of parental responsibilities, visitation, and parenting time issues should be referred to mediation and also address when the referral will be made.

Paragraph (b) provides for mediation of disputed custody, allocation of parental responsibilities, visitation, parenting time, and relocation issues in dissolution of marriage and paternity cases. The timing and manner of referral to mediation in dissolution of marriage and paternity cases is provided for in Rule 923.

Parties may be excused from referral under both paragraphs (a) and (b) if the court determines an impediment to mediation exists. Such impediments may include family violence, mental or cognitive impairment, alcohol abuse or chemical dependency, or other circumstances which may render mediation inappropriate or would unreasonably interfere with the mediation process.

Rule 906. Attorney Qualifications and Education in Child Custody, Allocation of Parental Responsibilities, Visitation, and Parenting Time Matters

(a) Statement of Purpose. This rule is promulgated to insure that counsel who are appointed by the court to participate in child custody, allocation of parental responsibilities, visitation, and parenting time matters, as delineated in Rule 900(b)(2), possess the ability, knowledge, and experience to do so in a competent and professional manner. To this end, each circuit court of this state shall develop a set of qualifications and educational requirements for attorneys appointed by the court to represent children in child custody and allocation of parental responsibilities cases and guardianship cases when custody or visitation is an issue and shall further develop a plan for the

procurement of qualified attorneys in accordance with the plan.

(b) Submission of Qualifications and Plan. The Chief Judge of a judicial circuit shall be responsible for the creation of the qualifications and Plan and for submitting them to the Conference of Chief Judges for approval. The Chief Judges of two or more contiguous judicial circuits may submit a Plan for the creation of a single set of qualifications and Plan encompassing those judicial circuits or encompassing contiguous counties within the circuits.

(c) Qualifications and Plan. The qualifications shall provide that the attorney is licensed and in good standing with the Illinois Supreme Court. Certification requirements may address minimum experience requirements for attorneys appointed by the court to represent minor children. In addition, the qualifications may include one or all of the following which are recommended: (1) Prior to appointment the attorney shall have 10 hours in the two years prior to the date the attorney qualifies for appointment in approved continuing legal education courses in the following areas: child development; roles of guardian *ad litem* and child representative; ethics in child custody and allocation of parental responsibilities cases; relevant substantive state, federal, and case law in custody, allocation of parental responsibilities, visitation, and parenting time matters; family dynamics, including substance abuse, domestic abuse, and mental health issues. (2) Periodic continuing education in approved child related courses shall be required to maintain qualification as an attorney eligible to be appointed by the court in child custody, allocation of parental responsibilities, visitation, and parenting time cases. (3) Requirements for initial pro bono representation. (4) Attorneys who work for governmental agencies may meet the requirements of this rule by attending appropriate in-house legal education classes.

(d) Conference of Chief Judges Review and Approval. The Conference of Chief Judges shall review and approve the Plan or may request that the Chief Judge modify the submitted list of qualifications and Plan. Upon approval, the Chief Judge of each circuit shall be responsible for administering the program and insuring compliance. An attorney approved to be appointed by the Court to participate in child custody, allocation of parental responsibilities, visitation, and parenting time matters under a Plan approved in one county or judicial circuit shall have reciprocity to participate in child custody, allocation of parental responsibilities, visitation, and parenting time matters in other counties and judicial circuits in Illinois.

Adopted February 10, 2006, effective July 1, 2006; amended Mar. 8, 2016, eff. immediately.

Committee Comments

(Revised March 8, 2016)

Special Supreme Court Committee on Child Custody Issues

Paragraph (a) requires each judicial circuit to establish qualifications and educational requirements for attorneys who are appointed by a court to represent children in child custody and allocation of parental responsibilities proceedings. The circuits would also be required to establish

a plan for procuring the services of qualified attorneys for child custody and allocation of parental responsibilities cases.

Paragraph (b) requires that attorney qualification and procurement plans be submitted to the Conference of Chief Circuit Judges for approval. It also provides that attorney qualification and procurement plans may be drafted to apply to contiguous circuits or to contiguous counties within two or more circuits.

Paragraph (c) specifies that attorneys appointed to represent children must be licensed and in good standing as attorneys. It also provides that the qualifications and standards must include a minimum experience requirement, and may include criteria concerning initial and continuing legal education requirements and requirements for initial *pro bono* representation. Attorneys approved under a circuit plan would be eligible for appointment in cases in other areas of the state on the basis of reciprocity.

In writing Rule 906, the Special Committee considered Rule 714, Capital Litigation Trial Bar, which imposes minimum requirements upon trial counsel in order to insure that counsel who participate in capital cases possess the ability, knowledge and experience to do so in a competent and professional manner. The Special Committee believes that cases involving child custody, allocation of parental responsibilities, visitation and parenting time issues demand the same high standards of advocacy as do capital cases.

The Special Committee is mindful that many judicial circuits will find it very difficult to find funds to pay for the plans under which counsel are appointed. Ideally, the State would provide sufficient funding to reimburse the private attorneys who are appointed by the court. In the absence of such funding, the individual judicial circuits will need to be innovative in meeting the financial requirements of the plans. In addition to requiring the parties to pay for the appointed lawyer's services, the local rules could provide for the targeting of court filing fees. Voluntary *pro bono* service is also strongly encouraged.

Rule 907. Minimum Duties and Responsibilities of Attorneys for Minor Children

(a) Every child representative, attorney for a child and guardian *ad litem* shall adhere to all ethical rules governing attorneys in professional practice, be mindful of any conflicts in the representation of children and take appropriate action to address such conflicts.

(b) Every child representative, attorney for a minor child and guardian *ad litem* shall have the right to interview his or her client(s) without any limitation or impediment. Upon appointment of a child representative, attorney for the child or guardian *ad litem*, the trial court shall enter an order to allow access to the child and all relevant documents.

(c) As soon as practicable, the child representative, attorney for the child or guardian *ad litem* shall interview the child, or if the child is too young to be interviewed, the attorney should, at a minimum, observe the child. The child representative, attorney for the child or guardian *ad litem* shall also take whatever reasonable steps are necessary to obtain all information pertaining to issues affecting the child, including interviewing family members and others possessing special knowledge of the child's circumstances.

(d) The child representative, attorney for the child or guardian *ad litem* shall take whatever reasonable steps are necessary to determine what services the family needs to address the custody or allocation of parental responsibilities dispute, make appropriate recommendations to the parties, and seek appropriate relief in court, if required, in order to serve the best interest of the child.

(e) The child representative, attorney for the child or guardian *ad litem* shall determine whether a settlement of the custody or allocation of parental responsibilities dispute can be achieved by agreement, and, to the extent feasible, shall attempt to resolve such disputes by an agreement that serves the best interest of the child.

Adopted February 10, 2006, effective July 1, 2006; amended Mar. 8, 2016, eff. immediately.

Committee Comments
Special Supreme Court Committee on Child Custody Issues

Rule 907 establishes minimum standards of practice for attorneys who represent children.

Paragraph (a) sets out the responsibility of an attorney representing a child in any capacity to act in accordance with the rules of ethics and avoid conflicts of interest.

Paragraphs (b) and (c) provide guidance on the attorney's essential duty of investigation: the duty to determine the child's circumstances and the family's needs. In aid of this duty, the rule provides specifically that an attorney has the right to interview a child client without limitation or impediment. Paragraph (b) also provides that the trial court shall enter an order allowing the child representative, attorney for the child or guardian *ad litem* access to all relevant documents.

Paragraph (d) addresses advocacy. The attorney for a child is required to make appropriate recommendations to the parties, seek resolution by agreement where it is in the best interests of the child, and seek relief on behalf of the child in court, when needed.

The Special Committee is aware that the American Bar Association and the National Conference of Commissioners on Uniform State Laws have taken the position that there should be three distinct types of appointments: (1) a child's attorney, who provides independent legal counsel in the same manner as to an adult client; (2) a "best interest attorney," such as Illinois' child representatives, who provide independent legal services for the child's best interests but who does not make general "recommendations"; (3) a guardian *ad litem*, who gathers information for the court and helps identify other needed services for the child or family.

In its Standards of Practice for Attorneys Representing Children in Custody Cases, the ABA recommended that attorneys not serve as GALs unless they do so as would a non-lawyer. However, the Illinois Marriage and Dissolution of Marriage Act mandates that GALs appointed under the Act be attorneys and that they may actually act in *loco parentis* for the child. See 750 ILCS 5/506. It is the position of the Special Committee that none of these concerns require changes in the language of Rule 907 or any other rule.

Rule 908. Judicial Training on Child Custody and Allocation of Parental Responsibilities Issues

(a) Meeting the challenge of deciding child custody and allocation of parental responsibilities cases fairly and expeditiously requires experience or training in a broad range of matters including, but not limited to: (1) child development, child psychology and family dynamics; (2) domestic violence issues; (3) alternative dispute resolution strategies; (4) child sexual abuse issues; (5) financial issues in these matters; (6) addiction and treatment issues; (7) statutory time limitations; and (8) cultural and diversity issues.

(b) Judges should have experience or training in the matters described in paragraph (a) of this rule before hearing these cases. Before a judge is assigned to hear child custody cases or allocation of parental responsibilities cases, the Chief Judge of the judicial circuit should consider the judge's judicial and legal experience, any prior training the judge has completed and any training that may be available to the judge before he or she will begin hearing these cases.

(c) Judges who, by specific assignment or otherwise, may be called upon to hear child custody or allocation of parental responsibilities cases should participate in judicial education opportunities available on these topics, such as attending those sessions or portions of the Education Conference, presented bi-annually at the direction of the Supreme Court, which address the topics described in paragraph (a) of this rule. Judges may also elect to participate in any other Judicial Conference Judicial Education Seminars addressing these topics, participate in other judicial education programs approved for the award of continuing judicial education credit by the Supreme Court, complete individual training through the Internet, computer training programs, video presentations, or other relevant programs. The Chief Judges of the judicial circuits should make reasonable efforts to ensure that judges have the opportunity to attend programs approved for the award of continuing judicial education credit by the Supreme Court which address the topics and issues described in paragraph (a) of this rule.

Adopted February 10, 2006, effective July 1, 2006; amended May 19, 2006, effective July 1, 2006; amended Mar. 8, 2016, eff. immediately.

Committee Comments
(Revised March 8, 2016)

Special Supreme Court Committee on Child Custody Issues

Proposed Rule 908 recognizes the complexity of child custody and allocation of parental responsibilities cases and the broad range of experience and training that would be helpful to judges hearing these cases.

Paragraph (b) requires that chief judges consider a judge's experience and training before the judge is assigned to hear such cases. This provision does not establish a mandatory prerequisite to such an assignment.

Paragraph (c) requires that trial judges who will hear child custody and allocation of parental

responsibilities cases should participate in Judicial Education opportunities on these type of matters. The proposed rule encourages personal attendance at seminars, but emphasizes that other forms of training may be used.

Rules 909-20. Reserved

Part B. Allocation of Parental Responsibilities Proceedings Under the Illinois Marriage and Dissolution of Marriage Act and the Illinois Parentage Act of 1984

Rule 921. General Provisions

In addition to the rules in Part A of this article, the rules in this Part B shall apply to allocation of parental responsibilities proceedings filed under the Illinois Marriage and Dissolution of Marriage Act, and the Illinois Parentage Act of 1984.

Adopted February 10, 2006, effective July 1, 2006; amended Mar. 8, 2016, eff. immediately.

Committee Comments
(Revised March 8, 2016)

Special Supreme Court Committee on Child Custody Issues

Rule 921 establishes the scope of Part B, which includes Rules 921 through 924. Rules 925 through 940 are Reserved. Rules 921 through 924 apply to allocation of parental responsibilities proceedings filed under the Illinois Marriage and Dissolution of Marriage Act, and the Illinois Parentage Act of 1984. The requirements of Rules 921 through 924 are in addition to the requirements of Part A found in Rules 900 through 908 as applicable.

Rule 922. Time Limitations

All allocation of parental responsibilities proceedings under this rule in the trial court shall be resolved within 18 months from the date of service of the petition or complaint to final order. In the event this time limit is not met, the trial court shall make written findings as to the reason(s) for the delay. The 18-month time limit shall not apply if the parties, including the attorney representing the child, the guardian *ad litem* or the child representative, agree in writing and the trial court makes a written finding that the extension of time is for good cause shown. In the event the parties do not agree, the court may consider whether an extension of time should be allowed for good cause shown.

Adopted February 10, 2006, effective July 1, 2006; amended Mar. 8, 2016, eff. immediately.

Committee Comments
(Revised March 8, 2016)

Special Supreme Court Committee on Child Custody Issues

Rule 922 provides that allocation of parental responsibilities matters in dissolution of marriage and paternity cases must be resolved within 18 months. Written findings are required if the deadline is not met, and extensions of the time limit may only be granted for good cause shown, on written finding by the trial court.

Rule 923. Case Management Conferences

(a) Initial Conference. In an allocation of parental responsibilities proceeding under this part, an initial case management conference pursuant to Rule 218 shall be held not later than 90 days after service of the petition or complaint is obtained. In addition to other matters the court may choose to address, the initial conference shall cover the following issues:

(1) *Parenting Education.* The parents shall show proof of completion of an approved parenting education program as required by Rule 924, provide a fixed schedule for compliance, or show cause to excuse compliance;

(2) *Allocation of Parental Responsibilities and Parenting Plan.* The parents shall provide the court with an agreed order regarding allocation of parental responsibilities and an agreed parenting plan, if there is an agreement. In the event that the parents do not agree to a parenting plan, then each parent must submit a proposed parenting plan to the Court within 120 days after service or filing of a petition for allocation of parental responsibilities;

(3) *Mediation.* If there is no agreement regarding allocation of parental responsibilities or a parenting plan or both, the court shall schedule the matter for mediation in accordance with Rule 905(b) and shall advise each parent of the responsibilities imposed upon them by the pertinent local court rules.

(b) A full case management conference shall be held not later than 30 days after mediation has been completed. In addition to other matters the court may choose to address at the conference, and if the court has not appointed counsel previously, the court shall address whether to appoint an attorney for the child or a guardian *ad litem* or a child representative in accordance with section 506 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/506).

Adopted February 10, 2006, effective July 1, 2006; amended Mar. 8, 2016, eff. immediately.

Committee Comments
(Revised March 8, 2016)

Special Supreme Court Committee on Child Custody Issues

Paragraph (a) provides that an initial case management conference is required within 90 days

after service of a petition or complaint is obtained in a dissolution of marriage case involving a child or in a paternity case. At the initial conference the trial court will ensure compliance with parenting education requirements (Rule 924) and determine whether the parents have agreed to the allocation of parental responsibilities and parenting plan. Parents not in agreement regarding allocation of parental responsibilities and parenting plan issues at the time of the initial case management conference will be referred to mediation. The trial court may also use the initial case management conference to address other matters it deems proper.

Each judicial circuit which currently has a mediation program has a provision in their local circuit court rules explaining how parents whose children are the subject of an allocation of parental responsibilities dispute must comply with the circuit court rules. These rules vary from judicial circuit to judicial circuit. In Cook County, parents are required to attend the mediation session but, if they do not agree with the mediator's decision, the parents merely bring this fact to the attention of the circuit court. In Du Page County, if the parents do not agree on allocation of parental responsibilities after they have completed the requirements of the mediation program, they may be required to see a clinical psychologist for a mandatory evaluation. Another difference between the judicial circuits is how the costs of mediation are paid. While many mediation programs impose costs, the Cook County Circuit Court's Marriage and Family Counseling Service is free.

Paragraph (a)(3) supports the Special Committee's goal of allowing the individual judicial circuits to adopt rules and set up programs which best suit that circuit's needs.

Paragraph (b) provides that in cases referred to mediation under the rule, a full case management conference is required within 30 days after mediation is completed. At the full case management conference, the court will consider, inter alia, the appointment of counsel for the child as provided in section 506 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/506).

Rule 924. Parenting Education Requirement

(a) Program. Each circuit or county shall create or approve a parenting education program consisting of at least four hours covering the subjects of parenting time and allocation of parental responsibilities and their impact on children.

(b) Mandatory Attendance. Except when excused by the court for good cause shown, all parties shall be required to attend and complete an approved parenting education program as soon as possible, but not later than 60 days after an initial case management conference. In the case of a default or lack of jurisdiction over the respondent, only the petitioning party is required to attend but if the respondent later enters an appearance or participates in postjudgment proceedings, then the party who has not attended the program shall attend. The court shall not excuse attendance unless the reason is documented in the record and a finding is made that excusing one or both parents from attendance is in the best interests of the child.

(c) Sanctions. The court may impose sanctions on any party willfully failing to complete the program.

Adopted February 10, 2006, effective July 1, 2006; amended Mar. 8, 2016, eff. immediately.

Committee Comments
(Revised March 8, 2016)

Special Supreme Court Committee on Child Custody Issues

Parenting education can have a very positive impact on the outcome of an allocation of parental responsibilities proceeding. Parenting education encourages parents to think about the impact of their actions on their children and teaches parents to deal with adult problems in ways that avoid harm to their children.

Paragraph (a) requires each judicial circuit or county to create or approve a parenting education program and sets out the minimum requirements of such a program. Individual judicial circuits or counties may permit the circuit courts to impose additional educational requirements on one or all of the parties.

Paragraph (b) requires parenting education for all dissolution of marriage cases involving a child and all parentage cases, absent good cause shown. Compliance with the parenting education requirement will be reviewed at the initial case management conference. Parents are expected to complete parenting education not later than 60 days after the initial case management conference.

Paragraph (c) provides that sanctions may be imposed on parties who willfully fail to comply with the parenting education requirement.

Rules 925-40. Reserved

Part C. Child Custody Proceedings Under Articles II, III and IV of the Juvenile Court Act of 1987

Rule 941. General Provisions

In addition to the rules in part A of this article, the rules in this part C shall apply to child custody proceedings filed under articles II, III and IV of the Juvenile Court Act of 1987 and all juvenile delinquency proceedings filed under article V of the Juvenile Court Act of 1987.

Adopted February 10, 2006, effective July 1, 2006; amended Oct. 6, 2016, eff. Nov. 1, 2016.

Rule 942. Court Family Conferences

(a) Abuse Neglect, and Dependency Cases. In cases under articles II, III, and IV of the Juvenile Court Act of 1987, on motion of any party or on its own motion, the court may in its discretion hold a Court Family Conference in accordance with this rule.

(b) Initial Conference

(1) *Time.* At the temporary custody hearing, or as soon thereafter as possible, the court shall set the date and time for an initial Court Family Conference and state whether parties shall appear in person or remotely, including by telephone or video conference. The initial Court Family Conference shall be held not less than 56 days after the Temporary Custody Hearing.

(2) *Parties.* All parties shall appear at the initial Court Family Conference except the minor, who may appear in person or through a guardian *ad litem* or his or her attorney. The caseworker assigned to the case must also appear. If no party objects, a foster parent may participate in the Conference. If any party objects, the court in its discretion may exclude the foster parent but the foster parent retains the right to be heard by the court before the end of the proceedings. The court may in its discretion allow other persons interested in the minor to attend the Conference at the request of the child or a parent. The court may permit any case participant to appear remotely, including by telephone or video conference. The failure of any party (with the exception of the child or his or her guardian *ad litem* or attorney) to appear, either in person or remotely, including by telephone or video conference, shall not prevent the court from proceeding with the Court Family Conference.

(3) *Record.* If all parties are present for the initial Court Family Conference, the court shall conduct the Conference off the record, and at the conclusion of the Conference summarize the Conference for the record. If the parents are not present, the Court shall conduct the entire Conference on the record.

(4) *Disclosure of Service Plan.* The Illinois Department of Children and Family Services or its assigns shall provide the most recent service plan to all parties seven days before the initial Court Family Conference. In the event that the service plan has not been filed with the court prior to the initial Court Family Conference, the court shall convene the initial Court Family Conference and discussion shall focus on services that would appropriately be included in the plan. Such discussion should ensure that the family and the caseworker have a clear understanding of the expectations of the court.

(5) *Issues.*

(A) The discussion at the initial Court Family Conference shall focus on eliminating the causes or conditions that contributed to the findings of probable cause and, if applicable, the existence of urgent and immediate necessity. If possible, at the conclusion of the discussion the court shall set a target date for return home or case closure. If the court determines that setting a target date for return home or case closure is not possible or is premature, the court, during the discussion, shall make clear to the parties and the caseworker what needs to be accomplished before the court will consider setting a target return home date.

(B) The discussion at the initial Court Family Conference shall include the services contained in the service plan for the parents and the child. The needs of the child and visitation plans between the parent and the child and between the child and any siblings shall also be discussed.

(C) The discussion shall include any other matters that the court, in its discretion, deems relevant.

(6) *Other Issues.* At the initial Court Family Conference, the court may address case management issues that would be appropriate for consideration at a subsequent Court Family Conference.

(7) *Order.* At the conclusion of the initial Court Family Conference, the court shall enter an order approving the service plan or setting forth any changes the court requires to be made to the service plan.

(c) Subsequent Court Family Conferences. Court Family Conferences may be held after the initial Conference as the court deems necessary. At a subsequent Court Family Conference, the court has the authority to make orders relating to case management as is provided for in other civil cases by Rule 218. In the court's discretion, matters considered at the initial Conference may be reviewed at any subsequent Conference.

(d) Concurrent Hearings. The initial Court Family Conference may be held concurrently with any hearing held within the required time. Subsequent Court Family Conferences may be held concurrently with any other hearing on the case.

(e) Confidentiality. With the exception of statements that would support new allegations of abuse or neglect, statements made during an off the record portion of an initial or subsequent Court Family Conference shall be inadmissible in any administrative or judicial proceeding. If the court refers to any specific statements made by the parents in its summary of the off the record portion of the Conference or in the order entered following the Conference, upon objection of the parents, such references shall be stricken.

Adopted February 10, 2006, effective July 1, 2006; amended Sept. 29, 2021, eff. Oct. 1, 2021.

Committee Comments
Special Supreme Court Committee on Child Custody Issues

A Court Family Conference is intended to be an opportunity for the trial court, the parents, the caseworker and the child or child's representative to discuss the court process, and the meaning, intent and practicality of the service plan; to discuss and ensure the safety of the child; to cooperatively discuss goals; and ultimately, to expedite resolution of the case through reunification of the family or other appropriate action. Paragraph (a) authorizes the use of Court Family Conferences in abuse, neglect and dependency cases.

Paragraph (b)(1) provides that a Court Family Conference will be held not less than 56 days after the Temporary Custody Hearing in cases when the court determines it is appropriate to do so.

Paragraph (b)(2) provides that all parties are required to appear at a Court Family Conference, except the minor, who may appear through a guardian *ad litem* or through counsel. The assigned caseworker must also appear, and a foster parent may appear, absent objection by a party.

Paragraph (b)(3) provides that statements made at Court Family Conferences are confidential

and may not be used subsequently, except for statements that may provide the basis for a new allegation of abuse or neglect. The Court Family Conference will be off the record unless the parents are not present. Upon completion of an off the record Conference, the court will summarize the matter for the record.

Paragraph (b)(4) provides that the most recent service plan is to be provided to the parties seven days prior to the Conference. At the initial Conference the service plan is discussed, with the purpose of ensuring that the caseworker and the parents clearly understand the expectations of the court.

Paragraph (b)(5) addresses the issues which should be discussed at the Court Family Conference, with an emphasis on the parties, the court and the service providers sharing information in an open and expeditious manner.

Paragraph (b)(7) provides that the court may approve the service plan or order changes to the plan at the conclusion of an initial Court Family Conference.

Paragraph (c) allows subsequent Court Family Conferences, and the combination of initial or subsequent Court Family Conferences with other hearings in the case. Subsequent Court Family Conferences may address any issues that could be considered in a case management conference under Rule 218.

Paragraph (d) provides that Court Family Conferences may be held at the same time that the court conducts any other hearing. As the rules of evidence apply to hearings, but do not apply to Court Family Conferences, it is incumbent upon the circuit court to only consider properly admissible evidence when determining the result of the hearing.

In order to promote an open and honest discourse at an initial or subsequent Court Family Conference, Paragraph (e) provides that statements made during the off the record portion of the Conference shall be inadmissible in any administrative or judicial proceeding. The only exception to this confidentiality requirement is when the statements at the Conference would support new allegations of abuse or neglect.

Rule 943. Use of Restraints on a Minor in Delinquency Proceedings Arising Under the Juvenile Court Act

(a) Instruments of restraint shall not be used on a minor during a court proceeding unless the court finds, after a hearing, that the use of restraints is necessary for one or more of the following reasons:

(1) Instruments of restraint are necessary to prevent physical harm to the minor or another person; or

(2) The minor has a history of disruptive behavior that has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior; or

(3) There is a well-founded belief that the minor presents a substantial risk of flight from the courtroom;

and there are no less restrictive alternatives to restraints that will prevent flight or physical harm to the minor or another person, including, but not limited to, the presence of court personnel, law enforcement officers, or bailiffs.

(b) The court must provide the minor's attorney an opportunity to be heard before the court orders the use of restraints. If restraints are ordered, the court shall enter an order setting forth its findings of fact.

(c) Any restraints authorized under this rule must be the least restrictive restraints necessary and must allow the minor limited movement of the hands to read and handle documents and writings necessary to the hearing. Under no circumstances, should a minor be restrained to another minor, wall, the floor, or furniture while in the courtroom.

(d) For purposes of this rule:

(1) "Instruments of restraint" and "restraints" are handcuffs, leg shackles, leg irons, belly belts, belly chains, or other restraint devices used to restrict a minor's free movement of limbs or appendages, including those made of cloth and leather; and

(2) A "minor" is an individual under the jurisdiction of the juvenile court, as provided in Article V of the Illinois Juvenile Court Act.

Adopted Oct. 6, 2016; eff. Nov. 1, 2016.

Committee Comments
(Oct. 6, 2016)

This rule is not intended to limit the court's inherent authority to control its courtroom and/or ensure the integrity of the proceedings are maintained in the event of disruptive behavior by the minor during the proceedings.

Article X. Illinois Supreme Court Commission on Access to Justice

Rule 10-100. Illinois Supreme Court Commission on Access to Justice

(a) Purpose.

The Illinois Supreme Court Commission on Access to Justice is established to promote,

facilitate, and enhance equal access to justice with an emphasis on access to the Illinois civil courts and administrative agencies for all people, particularly the poor and vulnerable. The purpose is to make access to justice a high priority for everyone in the legal system and, to the maximum extent possible, the Commission is intended to complement and collaborate with other entities addressing access to justice issues.

(b) Membership and Terms.

(1) The Illinois Supreme Court shall appoint seven members to the Commission. In addition, the Illinois Bar Foundation, The Chicago Bar Foundation, Lawyers Trust Fund of Illinois, and the Illinois Equal Justice Foundation shall have the right to appoint one member each. The commission shall be composed of five members of the judiciary, five lawyers, and one member who is not a lawyer. The Chief Justice of the Illinois Supreme Court shall appoint a person to serve as chair of the commission from among the members of the commission.

(i) The Illinois Supreme Court Commission on Access to Justice may, at its discretion, appoint separate specialized working groups and members to assist it in the carrying out of the purposes of the commission. Specialized groups may include, for example, Education, Court Rules/Procedures, Resources, Standardized Forms, and New Initiatives. These groups shall focus on particular issues within the working group's area of concentration. Membership within these specialized groups may be composed of both members and nonmembers of the Illinois Access to Justice Commission.

(2) Appointed members shall be selected based on their dedication to the purposes and goals of the Commission. The potential appointee's contributions to the bar and community and demonstrated commitment to providing legal services to the underserved also shall be considered.

(3) Members of the Commission shall be appointed for terms of three years, except that in making initial appointments to the Commission, the Court may make appointments for one-year or two-year terms to ensure that the terms of the Commission's members are staggered, so that no more than one third of the members' terms expire in any given year.

(4) Members shall not be compensated for their contributions, but may be reimbursed for their necessary expenses.

(c) Duties.

In realizing the purpose of the Commission, the duties may include:

(1) encouraging means by which individuals can find proper legal representation in the judicial system;

(2) maintaining circuit court and community support and assistance so that the existing legal self-help centers in all Illinois counties can remain effective and accessible;

(3) collaborating with the circuit courts to develop standard guidelines and judicial education programs regarding interaction between self-represented litigants, judges, clerks, and other court personnel;

(4) creating standardized forms for simpler civil legal problems and basic procedural

functions that, while not required for use by all litigants, would be required for courts to accept for filing throughout the state to ease the difficulty in self-representation;

(5) addressing language barriers in the courtroom;

(6) addressing the issue of accessibility to the courts, particularly in rural areas of Illinois;

(7) recognizing judges, attorneys, clerks, or other court personnel for their contributions of leadership and commitment to access to justice;

(8) recommending legislation, court rules, codes of conduct, policies, appropriations, and systematic changes that will open greater access to the courts, as needed;

(9) working with law schools in the development and furtherance of court-based programs that enhance equal access to justice;

(10) monitoring and sharing information on equal justice activities of similar entities in Illinois and in states outside of Illinois;

(11) expanding social work and social services in the court system for the purposes of addressing access to justice for individuals with special needs;

(12) supporting and guiding circuit court efforts to increase access through court-based information systems, Web sites, social media, and other technology platforms;

(13) researching and developing information by which the Commission's purpose can be made successful;

(14) promoting and supporting *pro bono* efforts in the state and fostering judicial and circuit court support for *pro bono* efforts throughout the state; and

(15) recommending to the Supreme Court other methods and means of improving the purposes and goals laid out in section (a) above.

(d) Administration.

(1) The Commission shall meet twice a year, at a minimum, and at other times at the request of the chair.

(2) A majority of its members in attendance at a meeting shall constitute a quorum. Meetings may be held at any place within the state and may also be held by means of telecommunication.

(3) The chair may appoint committees of members and assign them responsibilities consistent with the purposes and duties of the Commission.

(4) The Commission shall submit an annual report to the Court reporting on its activities and finances in the previous year and describing future goals for the upcoming year.

(5) The Commission shall appoint, with the approval of the Supreme Court, an Executive Director to serve as the principal executive officer to support the Commission's purpose and carry out its duties. The Executive Director, with the Commission's approval, may hire sufficient staff as necessary to assist in fulfilling the Commission's duties.

(6) Support for the Commission will be provided through in-kind and financial support from a combination of private and public sources.

Adopted June 13, 2012, eff. immediately; amended Apr. 8, 2013, eff. immediately.

Rule 10-101. Standardized Court Forms

(a) The Illinois Supreme Court Commission on Access to Justice shall establish a process to develop and approve standardized, legally sufficient forms for areas of law and practice where the Commission determines that there is a high volume of self-represented litigants or that standardized court forms will enhance access to justice or court efficiency.

(b) The Commission shall establish a process for publication, review and approval of any proposed standardized court form in accordance with the Supreme Court's administrative order, M.R. 25401, regarding standardized court forms.

(c) Standardized court forms may be used by any litigant or lawyer whenever they are applicable. All courts must accept standardized court forms.

(d) After a standardized court form is published, no court may (1) maintain, create, or disseminate alternate court forms that seek the same legal remedy; (2) require, promote, or encourage the use of any other court form that seeks the same legal remedy; (3) require that a standardized court form be used in a manner that is contrary to its intended purpose of enhancing access to justice; or (4) require that litigants or lawyers use a modified standardized court form, except as permitted in paragraph (e).

(e) A court may supplement a standardized court order as necessary or appropriate.

(f) A litigant or lawyer may add additional material to a standardized court form as long as the form is not altered.

(g) All courts must promote and encourage the use of standardized court forms in English and promote the published instructional material and the translated versions of the standardized court forms for assistance, by making them available to the public—in both electronic and paper formats as appropriate—by clerks, law libraries, self-help centers, judicial websites, and through other reasonable methods.

(h) Courts and clerk offices and their websites must use the promotional materials designed and distributed by the Illinois Supreme Court Commission on Access to Justice to promote standardized court forms to litigants or lawyers.

Adopted Nov. 28, 2012, eff. immediately; amended Mar. 26, 2021, eff. Sept. 1, 2021.

Committee Comment

(November 28, 2012)

(Revised March 26, 2021)

(a) This rule and the Court's accompanying administrative order, M.R. 25401, were adopted to set out a formal process for the development, review and approval of standardized court forms

for use in the Illinois courts. Utilizing standardized court forms in areas of law and practice where there is a high volume of self-represented litigants in the Illinois courts will enhance access to justice for these litigants and at the same time will improve the overall administration of justice.

(b) An open and inclusive process for the development and improvement of standardized court forms will be necessary to achieve the goals of this rule.

(c) Standardized court forms can only be effective if they are required to be accepted by all courts in the state. Technology and assistance that can make forms more user-friendly and accessible for people without lawyers and allow for necessary translations into other languages and formats cannot be efficiently provided if there are multiple variations of the same forms.

(d) For the same reasons noted in comment (c), allowing courts to require alterations of standardized court forms would defeat the purposes of having standardized court forms. The one exception is for court orders where findings or particular rulings from the court may need to be added to standard court form orders. In addition, a court cannot require the litigant to use a standardized court form in a way that defeats its intended purpose of enhancing access to justice for litigants.

(e) In some cases, such as an action involving a written contract, an exhibit may be necessary for a pleading to be legally sufficient. Litigants may wish to include other exhibits or supporting information with a complaint or filing as well. For privacy and other practical reasons, it also may be advisable that certain confidential, personal or private information be submitted through a supplementary process rather than included in a standardized court form. All pleadings, exhibits or other supporting information filed with the court must be consistent with the requirements of Supreme Court Rule 15 (social security numbers in pleadings and related matters) and Supreme Court Rule 138 (personal identity information).