

From: [REDACTED]
To: [Amy Bowne](#)
Subject: Re: Supreme Court Rule 218 Amendment
Date: Tuesday, April 30, 2019 6:51:09 PM

Dear Committee,

I write in opposition of the amendment to Supreme Court Rule 218, and in opposition of the proposed HIPAA Order. The proposed amendment is not limited to the medical condition “at issue” and assumes that an injured victim is placing his or her **entire** medical history at issue.

This pits the plaintiff’s constitutional right to privacy guaranteed by the Illinois Constitution against the plaintiff’s right to a remedy, also guaranteed by the Illinois Constitution. It also destroys the patient-physician privilege by forcing a plaintiff to “waive” his or her medical privacy even for conditions that are not at issue.

In addition, the rule forces the plaintiffs to sign a waiver of her constitutional right to privacy, and forces the plaintiff’s attorney to also sign such waiver, which is an interference in the attorney-client relationship. Such coercive prerequisite violates the right to remedy guaranteed by the Illinois Constitution.

An injured plaintiff under this rule will give unfettered access – forever - of his or her **entire** medical information, to the defendants, their insurers, and anyone else with whom the insurance chooses to share this information.

These ends are contrary to the spirit of the law and any reasonable notion of justice. And they defeat the rights of individual Illinoisans who simply seek justice..

I strongly oppose this change and believe that it must be rejected.

The rule must be amended in a way to provide fairness to both sides. Currently it does not require the defendants to limit subpoenas to medical condition “at issue” or to limit invasive requests for disproportionate access to medical information. For example, in *Palm v. Holocker*, the Illinois Supreme Court found that a defendant had not placed his medical condition “at issue” where the plaintiff sought the defendant’s medical records that could have shown that the defendant had vision impairment. *Palm v. Holocker*, 2018 IL 123152, ¶ 39, reh'g denied (Feb. 28, 2019).

Acceptance of this proposal will, surely, lead to abuse and severely impact an injured person’s decision to seek justice by filing a lawsuit. Please do not allow this amendment to pass.

I thank you for your consideration of my thoughts herein.

Regards,

Caroleann S. Gallagher

Partner

Dwyer & Coogan, P.C.

140 S. Dearborn St., Suite 1603

Chicago, Illinois 60603

P: [\(312\) 782-7482](tel:(312)782-7482)

F: (312) 782-7433



www.dwyercoogan.com

