



Illinois Supreme Court Rules Committee  
222 North LaSalle Street, 13<sup>th</sup> Floor  
Chicago, Illinois 60601

June 10, 2020

**Re: Proposed Change to Supreme Court Rule 23 (19-11; P.R. 0276) and Addition of Supreme Court Rule Regarding Practice and Procedure in Eviction Act Cases (20-07; P.R. 0286)**

Legal Aid Chicago respectfully submits the following comments in response to the proposed change to Illinois Supreme Court Rule (“ISCR”) 23 and the proposed addition of an ISCR regarding practice and procedure in Eviction Act cases.

**I. Legal Aid Chicago’s Statement of Interest**

As Cook County’s largest provider of free civil legal services, Legal Aid Chicago resolves critical legal problems for people living in poverty. Legal Aid Chicago practices extensively in the areas of housing, family and children’s law, public benefits, consumer, and immigrant and worker rights. Each year, Legal Aid Chicago advises or represents thousands of families with legal problems related to their housing, including defending subsidized housing residents in eviction court. Its Housing Practice Group also engages in advocacy to improve housing opportunities, ensure safety for victims of sexual assault and domestic violence, and end unlawful discrimination in housing.

Legal Aid Chicago writes in support of both P.R. 0276 and P.R. 0286 because they will increase efficiency, fairness and transparency and provide equal access to information surrounding the eviction process at both the trial and appellate court level.

**II. Comments on Proposed Rule Changes**

- a. Repealing ISCR 23 (P.R. 0276) and requiring all judicial opinions to be published will resolve conflicts within the current system and bring Illinois courts in line with other court systems.**

In its current form, Rule 23 restricts attorneys and advocates from citing Illinois unpublished decisions, even when the decision is directly applicable to the case being litigated. This leads to appellate court districts reaching inconsistent rulings on the same legal issues and to disputes among the parties regarding which authorities should be considered when deciding a case at the trial court level. Attorneys who comply with the letter of Rule 23 forgo the opportunity to discuss unpublished decisions, to the advantage of

opponents who fail to comply. The Illinois Appellate Court has highlighted these issues in several decisions and has also acknowledged that Rule 23 decisions can nonetheless affect the outcome of cases. *See Midwest Med. Records Ass’n v. Brown*, 2018 IL App (1st) 163230, ¶ 29; *Estate of LaPlume v. Bank of Am., N.A.*, 2014 IL App (2d) 130945, ¶ 24 (“Obviously, we cannot cite a non-precedential decision as authority for our analysis. Rather, we cite it as an example of a court’s reasoning and as a reasonability check.”). Moreover, unpublished decisions often include a dissenting opinion, making clear that they do address unsettled issues on which authority and clarity would be useful to litigants and attorneys at the trial court level. *See Snow & Ice, Inc. v. MPR Mgmt.*, 2017 IL App (1st) 151706-U, ¶ 39 (quoting Michael Hannon, *A Closer Look at Unpublished Opinions in the United States Courts of Appeals*, 3 J. APP. PRAC. & PROCESS 199, 221 (2001)).

Other court systems have recognized that permitting citation of cases regardless of publication status promotes efficiency and accountability. For example, Federal Rule of Appellate Procedure 32.1 prohibits courts from restricting the citation to unpublished federal judicial opinions issued after January 1, 2007. Similarly, other jurisdictions have taken steps to relax rules regarding citation to unpublished decisions by permitting attorneys to cite to unpublished orders. *See Melissa M. Serfass & Jessie Wallace Cranford, Federal and State Court Rules Governing Publication and Citation of Opinions*, 6 J. APP. PRAC. & PROCESS 349, 349 (2005) (providing that Alaska, Iowa, Kansas, North Carolina, Ohio, Texas, Utah, and West Virginia have permitted citations to unpublished decisions). As these jurisdictions apparently recognize, permitting all decisions to be cited as authority improves the quality and consistency of briefing and legal reasoning. For all of these reasons, Legal Aid Chicago writes in support of repealing Rule 23.

**b. Adding an ISCR regarding practice and procedure in eviction cases (P.R. 0286) is a vitally important change that will help tenants and eviction court judges and require compliance with the Illinois Code of Civil Procedure without imposing any burden on landlords.**

Legal Aid Chicago strongly supports this proposal, which would require the plaintiff in an eviction action to comply with 735 ILCS § 5/2-606 by attaching to its complaint the written instruments upon which the pleading is founded.

There is a common misperception that eviction actions are simple and routine matters involving relatively low stakes. This misperception leads some to conclude that such actions may be resolved without adherence to the basic rules of civil procedure. The most commonly ignored rule is the one requiring a plaintiff to attach to its complaint all the written instruments upon which the complaint is founded. *See* 735 ILCS § 5/2-606. The proposal submitted by the Supreme Court Commission on Access to Justice solves this problem by mandating that every eviction complaint include the plaintiff’s termination notice and relevant portions of the lease agreement.

This proposal is vitally important for four reasons.

First, requiring the plaintiff to attach the termination notice and relevant lease provisions to the complaint would ensure that these documents are always available to the judge, who can then quickly focus on the relevant issues and determine whether the plaintiff has complied with some essential elements of its *prima facie* case. This would prove to be an enormous benefit in high-volume courtrooms where the vast majority of defendants are unrepresented, and where many plaintiffs also appear *pro se*.

Second, it would help tenants' advocates properly assess each case and decide whether it warrants their involvement, a decision that must be made quickly in a summary proceeding like an eviction action. Legal Aid Chicago's clients are, for the most part, subsidized housing residents facing eviction from the only decent housing they can afford. They generally have copies of their landlords' complaints, which allege only that the defendant unlawfully withholds possession of property to which the plaintiff is entitled, but they frequently do not have copies of their termination notices and lease agreements. That makes it difficult to determine why they are facing eviction, and to identify the federal statutes and regulations, HUD guidance, and other policies that govern their tenancies. Landlords may argue that we can obtain the necessary information through discovery, but unless we are going to represent every tenant who requests our assistance we need the information before the discovery process begins.

Third, the benefits of complying with the proposed rule far outweigh the costs. It is difficult to imagine how a Plaintiff would lack a copy of a termination notice that is required to be served before filing or the governing lease, and *the relevant portions* of these documents run no more than a few pages.

Fourth, the proposed rule will resolve a contentious issue the Illinois Appellate Court will never address. Legal Aid Chicago has tried to bring this issue to the attention of the appellate court through an interlocutory appeal, but such appeals must "materially advance the ultimate termination of litigation." S. Ct. Rule 308. Reviewing a trial court's ruling on a motion to dismiss will not hasten the end of litigation in a summary proceeding, so we cannot reasonably expect the appellate court to reach this issue. The best way to resolve it, therefore, is through the adoption of the proposed rule.

Landlords' advocates argue that the Eviction Act simply requires the landlord to allege in its eviction complaint that the defendant unlawfully withholds possession of premises to which the plaintiff has a superior right of possession. That requirement, however, addresses nothing but the sufficiency of the complaint's allegations. It does not relieve the plaintiff in an eviction action of its duty to comply with Section 2-606 of the Illinois Code of Civil Procedure by attaching to the complaint the written instruments upon which the pleading is based. Unfortunately, the question of attachments has caused needless confusion in the eviction courts. The proposed rule clarifies the issue and makes sense. Legal Aid Chicago therefore urges its adoption.

### **III. Conclusion**

Legal Aid Chicago greatly appreciates the opportunity to share the above comments and respectfully looks forward to the Illinois Supreme Court Rules Committee's consideration.

Sincerely,

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