From:	David Centracchio
To:	Amy Bowne
Subject:	Proposed amendment to Illinois Supreme Court Rule 218
Date:	Friday, May 24, 2019 7:56:09 PM

Let this email serve as an objection to the proposed amendment to *SCR 218* on behalf of our clients, our attorneys and all Illinoisans (injured or not).

It is unclear as to what objective the proposed Orwellian amendment seeks to correct in exchange for abrogating injured persons' constitutional rights, federal law protecting medical information, well-settled law protecting the physician-patient privilege, and basic common sense. (See, *Illinois Constitution. S.H.A. Const. Art. 1, § 12*; *Best v. Taylor Machine v. Works*, 179 Ill. 2d 367 (1997); *Petrillo v. Syntex Laboratories*, 148 Ill. App.3d 581 (1st Dist. 1986); Health Insurance Portability and Accountability Act ("HIPAA") *45 C.F.R. §§ 160 through 164*)

The following proposed amendment language is not consistent with waiver: "the plaintiff ***shall*** present at the initial case management conference an executed ***waiver***" [Emphasis added]

Miriam Webster defines the verb **waive** as "*to relinquish (something, such as a legal right) voluntarily*" and the noun **waiver** as "*the act of intentionally relinquishing or abandoning a known right, claim, or privilege*".

It defines the verb **shall** as "*used in laws, regulations, or directives to express what is mandatory*".

It also defines the verb **forfeit** as "*to lose or lose the right to especially by some error, offense, or crime*" and the noun **forfeiture** as "*the act of forfeiting: the loss of property or money because of a breach of a legal obligation*"

Waiver requires one to *intentionally relinquish.* Filing suit against a tortfeasor is an exercise of a constitutional right without an intentional relinquishment of any rights.

Under the proposed amendment, the act of filing suit mandates that an injured person forfeit their protected rights under our constitution, federal law and well settled case law.

It is intellectually dishonest to call a mandated relinquishment of a right a waiver. It is equally intellectually dishonest to call a forfeiture due to the exercise of a right a waiver. An honest composition of the proposed amendment should have read:

> In any case in which the plaintiff's medical condition is at issue, ~~plaintiff shall present at the initial case management conference an executed waiver of the~~ plaintiff's right to privacy over the plaintiff's medical information to be produced in discovery is forfeited. The ~~waiver~~ forfeiture shall be contained in the court order ~~for~~ mandating the release of those medical or psychological records from plaintiff's birth for the whole world to have regardless if they are related to the claimed condition(s) at issue and shall be in the form provided.

Most importantly, the proposed amendment requires a plaintiff to: balance his/her constitutional

right to remedy and justice against unwanted disclosure of unrelated medical and psychological conditions; to be subjected to accept a reduced pre-litigation offer due to the fear of disclosure and release to the world of unrelated medical information that carries a stigma; or consider foregoing vital medical or psychological treatment for fear of future disclosure. All the foregoing effectively closes the courthouse doors to at least 1.9 million Illinoisans should they be injured by a tortfeasor. (According to the National Institute of Mental Health nearly 1 in 5 US adults live with a mental illness. Illinois has an approximate adult population of 9.8 million) It also provides tortfeasors (and their insurers) an unfettered right to personal medical and psychological information thanks to their negligence, malfeasance or utter disregard of the safety of others.

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