M.R. 3140

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

Order entered September 29, 2021.

(Deleted material is struck through, and new material is underscored.)

Effective October 1, 2021, Illinois Supreme Court Rules 2, 21, 88, 90, 91, 93, 99, 100.6, 100.7, 100.8, 100.10, 113, 203, 206, 207, 209, 217, 218, 237, 277, 551, 901, 905, and 942 are amended, as follows.

Amended Rule 2

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 conferenceunder 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.

Amended Rule 21

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).

Amended Rule 88

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.

Amended Rule 90

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. A party 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.

Amended Rule 91

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. <u>For the purposes of this paragraph, being present encompasses appearing in person, by counsel, or remotely, including by telephone or video conference.</u>

(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.

Amended Rule 93

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.

Amended Rule 99

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) 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 Rule 100.6

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.

Amended Rule 100.7

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.

Amended Rule 100.8

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.

Amended Rule 100.10

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.

Amended Rule 113

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.

Amended Rule 203

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.

Amended Rule 206

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

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other

parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

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

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

(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).

Amended Rule 207

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 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.

Amended Rule 217

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*.

Amended Rule 218

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, ~~and~~ duration, and means by which ~~of~~ depositions ~~which~~ may be taken;

(ii) the area of expertise and the number of expert witnesses who may be called; and

(iii) deadlines for the disclosure of witnesses and the completion of written discovery and depositions;

(6) the possibility of settlement and scheduling of a settlement conference;

(7) the advisability of alternative dispute resolution;

(8) the date on which the case should be ready for trial;

(9) the advisability of holding subsequent case management conferences; and

(10) any other matters which may aid in the disposition of the action 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 in person 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.

Amended Rule 237

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).

Amended Rule 277

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).

Amended Rule 551

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.

Amended Rule 901

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.

Amended Rule 905

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.

Amended Rule 942

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.