

Comment on Proposal 24-09

Though directed to Proposal 24-09, which concerns an amendment to Rule 9(c,) the substance of this comment relates to Rule 9(d)(2) and Rule 9(f). This comment is submitted because as a member of the bar there is no other formal way to communicate opposition to the manner in which the rules related to electronic filing are being developed, issued, and implemented. The Illinois Supreme Court has the authority to make any changes it desires without hearing or comment from the bar, but that it can, does not mean it should. Filing is essential to the most basic of litigation practice and the bar, if not allowed to be involved in the development of the rules through notice and comment rulemaking, should at least be made timely aware of the changes.

As articulated in Bruce Pfaff's submission of Proposal 24-01 and his comment to Proposal 24-09 submitted on June 27, 2024, in the wake of the decision in *Kilpatrick v. Baxter Healthcare Corp.*, 2023 IL App (2d) 230088 and *Leff, Klein & Kalfen, Ltd. v. Wiczer & Assocs., LLC*, 2022 IL App (2d) 220089-U and the subsequent denial of the petition for leave to appeal in that case, the bar is increasingly concerned about being able to submit and have accepted time sensitive filings promptly accepted. Without a hearing, Mr. Pfaff's proposal 24-01 was rejected. Also without a hearing, Rule 9(f) and the concomitant rejection standards were adopted and then Rule 9(f) was further amended without even additional notice of the amendment on the Supreme Court's website.

Effective September 1, 2024, there will be 22 separate rejection standards in Illinois circuit courts and 37 rejection standards in the Illinois courts of review. But there are actually many more because both sets of standards allow for rejections based upon local rules and rejection by clerks for any unspecific reason. Instead of bringing uniformity to the process these standards, created without input from the wider bar, bring uncertainty. Further exacerbating the problem, the rejection standards appear to be able to be modified at any time without notice such that lawyers and their staffs will have to monitor the standards along the local rules on a consistent basis. The most that the bar has received is in Justice Doherty's June 24, 2024 letter to the editor in the Chicago Daily Law Bulletin that the e-Business Policy Advisory Board "will be examined for patterns of use and overuse, and further changes may be recommended down the road." That is cold comfort for parties and their lawyers that have their submissions rejected. Rule 9(d)(2) does not provide sufficient ability to obtain remedy where the unknown rejection standards are employed or even one that is available, but not circulated.

Supreme Court Rule 9(f) and the rejection standards incorporated therein, as seen in some of the examples below, improperly empower clerks to act as judges or to stand in for the opposing party. This allows the clerk to conduct more than the ministerial act of filing and injects the clerk into the substance of cases. The Rule and standards also allows for arbitrary and capricious application of unwritten rules for which there is no remedy under the current rule. Rule 9(d)(2)'s good cause standard is not prepared for some of the rejections permitted to clerks.

As seen in the *Kilpatrick* case, these rejection standards threaten the substantive rights of parties based upon errors that in no way imperil the integrity of court records, the ability of the judiciary to decide a case on the merits, or prejudice the opposing side. These rejection standards also implicate the licenses of Illinois lawyers who have obligations under the Rules of Professional Conduct, including, at least, Rules 1.1, 1.3, 3.2, 5.1, and 5.3. It makes it very difficult to comport with the rejection standards when so important a change is being implemented without notice and comment rulemaking and when changes are made without even notice on the Illinois Supreme Court's website as happened with the amendment to Rule 9(f).

The opacity of the process is only highlighted by the disclosure in Justice Doherty's letter to the editor that the e-Business Policy Advisory Board "is developing a proposal for a 'grace

period' in which a rejected document could be corrected and refiled; the corrected document would be deemed filed as of the date of the original attempt. This would mitigate the consequences of rejection where a hard deadline must be met" and that this Committee has already approved the concept." It took a commentary on the topic by this author in the Law Bulletin on June 20, 2024 to obtain information fundamental to the practice of law in Illinois and even then we only get a glimpse of what is being considered with no detail being provided on what that "grace period" would be and how it would implemented.

The deficiencies in the process aside, some examples of rejections are helpful to illustrate the scope of the problem. Rule 9(f) will not correct the problems because these rejections will be permitted by the rejection standards that will be effective on September 1, 2024. The standards will not bring uniformity and more importantly do not do "substantial justice between and among the parties" as is the goal of case management under Rule 218.

Example No. 1 – 24 L 10, Circuit Court of Cook County

In this case, the plaintiff was granted leave to file an amended complaint by June 18, 2024. The plaintiff timely submitted the amended complaint, but it was rejected because the clerk claimed that there was no such order. But, of course, there was. This rejection would be permitted under the rejection standards. But more fundamentally, if an amended complaint is not timely filed or is filed without leave, that is for the court and opposing counsel, not the clerk, to decide.

As detailed in the below email to the judge and the clerk, counsel tried repeatedly to get the amended complaint filed, but to no avail. Ultimately, counsel had to get it hand stamped because the clerk would not accept the submission electronically despite a clear order allowing the amended complaint. This is a waste of time, effort, and money.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Plaintiff: Andrea Monique Gibson-Skiba
Defendant: Direct Auto Insurance Company

Case No. 24 L 10

Judge: Patrick J. Sherlock

Case Management Order

Written fact discovery to be completed by: [blank]

Party depositions (i.e., 218(b)(3)) and (d) depositions to be completed by: [blank]

Plaintiff's shall answer 218(b)(3) interrogatories by: [blank]

Defendant's shall answer 218(b)(3) interrogatories by: [blank]

Plaintiff's 218(b)(3) witness depositions to be completed by: [blank]

Defendant's 218(b)(3) witness depositions to be completed by: [blank]

All discovery shall be completed no later than 60 days before trial (Rule 218).

This matter is continued for a Case Management Conference on: 06-22-2024 at 10:00 AM for status only.

Service of Discovery is Deemed to be a Deposition of All Counsel if Order is not complied with. CONDUCT HEARING INTERCOMMENTS

The court will not be held responsible for any delay in the filing of any document or for any delay in the processing of any document filed with the court.

Direct Auto Insurance Company is deemed to have accepted the court's order. The court will not be held responsible for any delay in the filing of any document or for any delay in the processing of any document filed with the court.

The case is classified for West of Prothonotary.

The case is voluntarily dismissed under 735 ILCS 92.1000.

Failure to appear may result in dismissal for want of prosecution or entry of a default order. Failure to comply with this order shall be a basis for sanctions under Rule 218(f). Failure to follow this order may constitute a forfeiture of such discovery by that party.

Name: [blank] REGISTERED
Address: [blank]
City/State: [blank]
Telephone: [blank]
E-mail: [blank]
Att. For: [blank]
Att. No.: [blank]

Honorable Patrick J. Sherlock No. 1942

Please See Explanatory Notes on Reverse Side

30th January 2018

Filing Rejected

Envelope Number: 20240222
Case Number: 2024-000010
Case Name: Andrea Gibson-Skiba vs Direct Auto Insurance Company American Alliance Casualty Company

The filing below has been reviewed and has been returned for further action. Please confer with the corrections outlined below. Please contact your local court clerk for further information.

Return Reason(s) from Clerk's Office
Court County - Law - District 1 - Chicago

Returned Reason: Plaintiff

Returned Comments: [blank]

If you have a question, the rejected filing will be returned to you with the following information:

Document Details
Case Number: 2024-000010
Case Name: Andrea Gibson-Skiba vs Direct Auto Insurance Company American Alliance Casualty Company
Date/Time Submitted: 02/24/2024 8:59 AM CST
Filing Type: E-Filed/Online
Filing Description: ORDER GRANTING AMENDMENT
Filing Code: Exhibits Filed
Filed By: Dean Caras
Filing Attorney: [blank]

If you are not represented by a lawyer, we want to improve your e-filing experience. Please [click here](#) to fill out a short survey.

Patrick Eckler

From: Dean Caras <dean.caras@americanalliance.com>
Sent: Tuesday, June 25, 2024 12:11 PM
To: Andrea Gibson-Skiba <agibson@directauto.com>
Cc: 2024-000010: Andrea Gibson-Skiba vs Direct Auto Insurance Company American Alliance Casualty Company for Filing Exhibits Filed
Subject: 5/29/24 01: Order v Direct Auto.pdf; LAC - Direct Auto Complaint.pdf

Attachments: [blank]

Caution: This email originated from outside of the IBM organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Final Status/Clerk: This Court stamped an order (attached) allowing the Plaintiff in this matter to file an amended complaint by June 18, 2024.

Pursuant to that Order, Plaintiff has attempted to file an amended complaint on three separate occasions. Two of those were on June 18. Plaintiff received email notification (02/25) that the Court rejected both filings. Plaintiff resubmitted and received the same message below this morning.

The clerk's office states that the Order allowing Plaintiff to amend by June 18, 2024 is not sufficient and requested that Plaintiff email Calendar Q directly.

Please advise:

The amended complaint and order are both attached hereto, and Defendant's counsel has been aware of this ongoing matter.

Thank you,

Dean J. Caras
Melissa N. Hearn
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From: no-reply@filingmail.cookcounty.il.us
Sent: Tuesday, June 25, 2024 12:03 PM
To: Dean Caras <dean.caras@americanalliance.com>
Subject: Filing Rejected for Envelope Number: 20240222 in Case: 2024-000010: Andrea Gibson-Skiba vs Direct Auto Insurance Company American Alliance Casualty Company for Filing Exhibits Filed

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ANDREA MONIQUE GIBSON-SKIBA,)
)
 Plaintiff,)
)
 v.)
)
 DIRECT AUTO INSURANCE)
 COMPANY,)
)
 Defendant,)

Case No.: 24 L 10

FILED
JUN 18 2024
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

FIRST AMENDED COMPLAINT AT LAW

NOW COMES Plaintiff, ANDREA MONIQUE GIBSON-SKIBA, by and through her attorney, Dean J. Caras, and complaining of Defendant, DIRECT AUTO INSURANCE COMPANY ("DIRECT AUTO"), a corporation, states as follows:

Example No. 2 – (confidentiality requested as the matter is ongoing)

In this case, the plaintiff’s complaint, was rejected because the complaint did not have a Rule 222(b) affidavit attached. This too would be permitted under the rejection standards.

It cannot be (or at least should not be) the intention of the Court to allow clerks to have the power to reject in such a basis. If so, clerks could reject an answer submitted by a defendant that does not attach a Section 2-610(b) affidavit or does not attach a verification in answer to a verified complaint as required by Section 2-605. The failure of a defendant to attach these affidavits could lead to admissions that are dispositive of certain factual issues or the entire case and by rejecting the submission, and allowing correction, the clerk is interfering with the process and prejudicing the opposing party. Likewise, the clerk should not be allowed to evaluate the propriety or sufficiency of a Section 2-622 affidavit or whether it is required in the first instance. Judges and opposing parties, not clerks, should be the guardians of such issues.

Review Date
04/05/2024 12:01 PM CDT

Return Information		
Reject Reason	Reject Comments	Return Date
Missing Items	You are missing the required Affidavit 222B. This form can be found at https://www.lakecountycircuitclerk.org/court-forms . VP	04/05/2024 12:01 PM CDT

Example No. 3 – 24 L 2900, Circuit Court of Cook County (subsequently removed to federal court)

In this case, plaintiff’s counsel submitted a complaint against numerous defendants in a PFAS case. The clerk rejected the filing because there were too many documents in the envelope. However, plaintiffs’ counsel, as set forth in their emergency motion to file the complaint *nunc pro tunc* asserted that they had previously filed similar complaints in the same fashion and those had been accepted. And while the plaintiff was able to get the problem corrected, the time and effort required was entirely unnecessary and purely the creation of the clerk without notice to the plaintiff that such a form of submission would not be accepted. This rejection too will be permitted under the rejection standards despite not being published anywhere and being contrary to the clerk’s prior practice.



Filing Rejected

Envelope Number: 26844005
Case Number: 26844005
Case Name:

The filing below has been reviewed and has been returned for further action. **Please refile with the corrections outlined below.** Please contact your local court clerk for further information.

Return Reason(s) from Clerk's Office	
Court	Cook County - Law - District 1 - Chicago
Returned Reason	Multiple filings submitted as one transaction
Returned Comments	Please limit your filing to 10 per envelope. Please only submit your complaint and the exhibits. When your case is accepted then submit your summons. Thanks.

Example No. 4 – 2022CONC001008, Circuit Court of Cook County

The petitioner sought to change his name a second time. Given that, the court requested the name change documents from the 2008 name change be filed in the 2022 name change petition. The clerk rejected the submission of the 2008 name change documents because the 2008 name change documents bore the name of the prior clerk, Dorothy Brown, not the current clerk, Iris Martinez. As a consequence of being unable to timely file these documents, an otherwise routine matter, was delayed and expense were incurred. This too, would be a proper rejection under the rejection standards.

Lead Document

File Name	Description	Security	Download
2008CONC000207 Order.pdf 288.77 kB	Supplemental Document	Non-Confidential	Original File

Rejection Information

Rejection Reason	Date / Time	Comment
Rejected	11/21/2022 11:29 AM	please upload the correct documents for Iris Martinez Clerk of the circuit court

Additional Points

- Some of the clerk's conduct in rejecting submissions improperly borders on the practice of law.
- As set forth in Justice Doherty's letter, there were over 400,000 rejections in 2021. Among those number, it is not clear how many, are rejections for failure to pay a fee. But that is a category error. A filing that requires a fee, a complaint, counterclaim, or appearance, that is not accompanied by the fee or waiver, is not a filing because without the fee it is not a complaint, counterclaim, or appearance. It is like a subpoena without a check for appearance and mileage; it is not subpoena.

Conclusion

Anecdotal evidence is not the best evidence, but the empirical evidence is not publicly available. What these examples above show is that the rejection standards will not correct the problems sought to be rectified and Rule 9(d)(2) is not an adequate remedy should the clerk reject a submission. Though each of these examples involve plaintiffs or petitioners, this is no less a problem for defendants and respondents as jurisdictional and statutes of limitations exist for defendants with respect to, among other things, counterclaims and third-party complaints for contribution, motions to reconsider, post-trial motions, and notices of appeal.

The Illinois Constitution requires that "[e]very person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly." The current version of Rule 9(d)(2), Rule 9(f), and the rejection standards violate the requirement that justice be obtained in the manner called for by the highest law of this State. In order to effectuate that command and resolve all of these issues and despite having previously been rejected, Mr. Pfaff's proposal to adopt Federal Rule of Civil Procedure 5(d)(4) should be considered.

Respectfully submitted,

/s/ Donald Patrick Eckler
Donald Patrick Eckler – 