



July 7, 2021

Sent Via email: [RulesCommittee@illinoiscourts.gov](mailto:RulesCommittee@illinoiscourts.gov)

Illinois Supreme Court Rules Committee  
Attn: Committee Secretary Amy Bowne  
222 North LaSalle Street, 13th Floor  
Chicago, Illinois 60601

Dear Committee Secretary Bowne:

The Illinois Defense Counsel is an organization of approximately 600 civil defense attorneys whose members are committed to protecting and improving civil justice in Illinois. The Association now writes in opposition to Proposal 21-01 - specifically, the proposed change to Supreme Court Rule 206, "Method of Taking Depositions on Oral Examinations." It is the position of the Association that without the presence of paragraph 206(h)(3), deponents in many instances would be denied their right to vigorous and competent representation during depositions.

While the Covid-19 pandemic has changed many of the ways that we practice law in Illinois now and in the future, many of these changes will be positive and will make the practice more efficient and less expensive. Remote depositions have become very common and no doubt will continue to be so long after the pandemic has passed. Nevertheless, these changes must not come at the cost of less effective representation of deponents during depositions.

The deletion of Rule 206(h)(3) is not a new proposal and has something of a dubious history. Prior to the issuance of this Court's June 4, 2020 order amending its April 29, 2020 deletion of paragraph h(3), attempts were made by attorneys to prevent counsel from being physically present at depositions. This relief was sought from Judge Evans, the Chief Judge of the Circuit Court of Cook County, and then from Judge Flannery, the Presiding Judge of the Law Division of the Circuit Court of Cook County. It was ultimately decided that general orders would issue, leaving the decision on how to handle remote depositions in individual cases to the discretion of the trial and motion judges. Unsatisfied with this result, the proponents of barring counsel from being present at depositions and forcing all depositions to proceed apace, submitted the proposed change to Rule 206(h) deleting paragraph (3).

Within hours of this Court's April 29, 2020 order temporarily amending Rule 206(h)(3), motions were filed insisting that the amendment meant that a party is not entitled to have counsel physically present with them during a deposition and that by this amendment, the Court was mandating that depositions are to proceed remotely without delay. This Court's June 4, 2020 order made it clear that the deletion of subparagraph (3) did not mean that the personal presence by a party or party's attorney is absolutely prohibited and that in the absence of an agreement, the circumstances of a remote deposition should be left to the discretion of the trial court.

We ask that the Court consider the fact that in order to effectively represent some deponents, particularly the representation of professionals and clients in emotionally charged cases that may be intimidated by the deposition proceeding, the physical presence of counsel at the deposition is often necessary. The right of a civil defendant to have counsel present and the ability of that counsel to provide competent representation, as required under Rule 1.1 of the Rules of Professional Conduct, may require, in a given case, the physical presence of counsel at the deposition. In emotionally charged litigation, as well as in exceedingly complex and document intensive matters, having counsel physically present with the witness at a deposition is a right that should not be impeded.



Thankfully, the State of Illinois now appears to be emerging from this crippling pandemic. Simply put, while remote depositions should continue to be allowed as a cost and time saving procedure, there is absolutely no reason to restrict the right of a deponent to have his or her attorney physically present during a remote deposition.

In its current form, the proposed deletion of paragraph 3 from Rule 206(h) will almost certainly be used by those seeking to impair a deponent's right to the physical presence of counsel during a deposition. The argument will be raised that Rule 206(h)(3) once protected the right of a party to have counsel present during a deposition, and that provision was specifically considered and rejected by the Court in the latest change to the Rule.

Indeed, the proposed Committee Comments to paragraph (h) of Rule 206 illustrate the dangers of preventing a deponent from having his or her attorney present during a deposition and the need to preserve the right of a deponent to have his or her attorney physically present.

For all of these reasons, we request that Rule 206(h)(3) be preserved as is with the additional comment that the personal presence by a party or a party's attorney is not prohibited and that absent agreement, the circumstances of a remote deposition are within the discretion of the trial court, as the trial court is in the best position to do justice between the parties.

Sincerely,

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