

From: [Brendan A. Maher](#)
To: [Amy Bowne](#)
Subject: Illinois Supreme Court Rules Committee: Response to Proposal 19-11 (Rule 23)
Date: Tuesday, June 9, 2020 1:51:20 PM
Attachments: [Prop19-11.pdf](#)
[Blacks Law Dictionary \(Authority\).Subsection 4.pdf](#)

Attorney Bowne:

I write to express my strong support for retired Judge Murray's proposal to abolish or amend Illinois Supreme Court Rule 23(e). In particular, I strongly support any amendments to Rule 23, and to Rule 23(e) in particular, that would expressly permit all litigants in the State of Illinois to rely on and cite in pleadings and arguments any and all Opinions, Written Orders and/or Summary Orders (to the extent that those distinctions are maintained within the Rule if it is amended) entered and made public by the Illinois Appellate Courts.

As the Committee is certainly aware, almost all legal research is now conducted by way of on-line electronic legal databases such as Lexis and Westlaw. Those databases publish all Appellate Court dispositions, whether they are Opinions, Written Orders or Summary Orders. Rule 23(e), however, expressly prohibits lawyers, judges and self-represented litigants from even mentioning, much less authoritatively citing, published legal material that all parties and the judge are able to access through the legal research process. Rule 23(e) places the parties in and the judge in the untenable position of pretending that Orders authored by an Illinois Appellate Court do not exist, even if those Orders might otherwise be controlling, persuasive or even considered as relevant and helpful secondary authority based on the specific facts of a given case.

In its current form, Rule 23(e) places both litigants and judges in the awkward position of knowing that an Appellate Court, and sometimes the judge's own direct Appellate Court, has provided solid legal or factual guidance on an issue relevant to the litigation in the form of an electronically published Rule 23 Order, but being unable to rely on that guidance as being in any way meaningful, much less authoritative, even though it exists and all parties and the judge have seen and read the Rule 23 Order.

In my opinion, the un-citable existence of "published-but-unpublished" Rule 23(e) Orders undermines public and litigant confidence in the judiciary as a whole. The current version of Rule 23 should be amended to permit reliance on, and citation to, Rule 23(e) Orders or, in the alternative, Rule 23 should be abolished and all Appellate Court decisions should be in the form of an Opinion.

Thank you to all members of the Supreme Court's Rules Committee for your consideration of the opinions expressed above, and for consideration of the proposed amendment.

Brendan A. Maher
Circuit Judge
Criminal Justice Center
650 West State Street
Rockford, IL 61101
(815) 516-2412

[Link to Winnebago County Criminal Division Schedule \(Effective June 1, 2020\)](#)

[Criminal Docket Generator](#)

[Link to Standing Orders & Calendars](#)

NOTE: Attorneys and/or parties receiving communications relating to a pending case **MUST “REPLY TO ALL”** when responding to this communication (IL S.Ct. Rule 63(A)(5); IL RPC 3.5(b))