

Proposal 05-11 (P.R. 0145)
Amends Supreme Court Rules 19 and 302
Offered by the Office of the Attorney General of Illinois

Rule 19. Notice of Claims and Findings of Unconstitutionality

(a) Notice Required. In any cause or proceeding in which the constitutionality of a statute, ordinance, ~~or~~ administrative regulation or other law affecting the public interest is raised, and to which action or proceeding the State or the political subdivision, agency, or officer affected is not already a party, the litigant raising the constitutional issue shall serve an appropriate notice thereof on the Attorney General, State's Attorney, municipal counsel or agency attorney, or on two or more of the same, as the case may be. Such notice shall be served on the Attorney General in all instances where the constitutionality of an Illinois statute, regulation or other law is challenged, including where the State's Attorney, municipal counsel or agency attorney also is notified. For purposes of this Rule, constitutional challenges include those instances where it is argued or found that a statute, ordinance, regulation or other law is preempted by federal law.

(b) Contents and Time for Filing Notice. The notice shall identify the particular statute, ordinance ~~or~~ regulation or other law, and shall briefly describe the nature of the constitutional challenge. The notice shall be served at the time of suit, answer or counterclaim, if constitutionality is raised at that level, or promptly after the constitutional question arises as a result of a circuit or reviewing court ruling or judgment.

(c) Purpose of Notice. The purpose of such notice shall be to afford the State, political subdivision, agency or officer, as the case may be, the opportunity, but not the obligation, to intervene in the cause or proceeding for the purpose of defending the constitutionality of the law or regulation challenged. The election to intervene shall be subject to applicable provisions of law governing intervention or impleading of interested parties, although the Attorney General shall be allowed to intervene, upon his or her request, as a matter of right to defend an Illinois statute, regulation or other law against a claim of unconstitutionality or preemption.

(d) Findings of Unconstitutionality. A court shall not find unconstitutional or preempted a statute, ordinance, regulation or other law, unless:

(1) the court makes the finding in a written order or opinion, or in an oral statement on the record that is transcribed;

(2) such order or opinion clearly identifies what portion(s) of the statute, ordinance, regulation or other law is being held unconstitutional or preempted;

(3) such order or opinion clearly sets forth the specific ground(s) for the finding or unconstitutionality or preemption, including:

(A) the constitutional provision(s) upon which the finding of

unconstitutionality is based, or the federal law(s) upon which the finding of preemption is based;

(B) an analysis of how the statute, ordinance, regulation or other law, or portion(s) thereof, violates the constitution or, in the case of preemption, is inconsistent with federal law; and

(C) whether the statute, ordinance, regulation or other law is being found unconstitutional on its face, as applied to the case *sub judice*, or both;

(4) such order or opinion states that the statute, ordinance, regulation or other law being held unconstitutional or preempted cannot reasonably be construed in a manner that would preserve its validity;

(5) such order or opinion states that the finding of unconstitutionality or preemption is necessary to the decision or judgment rendered, and that such decision or judgment cannot rest upon an alternative ground; and

(6) such order or opinion confirms that the notice required by this Rule has been served, and that those served with such notice have been given adequate time and opportunity under the circumstances to defend the statute, ordinance, regulation or other law challenged.

Committee Comment

Paragraph (d) is intended to implement the principles encapsulated in *People v. Cornelius*, 213 Ill. 2d 178 (2004), and *In re Parentage of John M.*, 212 Ill. 2d 253 (2004), concerning the duties incumbent upon the circuit court when declaring state statutes to be unconstitutional. The amendments to Rule 19(a) and Rule 19(c), and new Rule 19(d)(6), are intended to ensure that the Attorney General is notified and allowed to intervene whenever it is argued or found that an Illinois law is unconstitutional. The language regarding preemption is intended to make clear that an argument or finding of preemption is constitutional in nature, see *Orman v. Charles Schwab & Co., Inc.*, 179 Ill. 2d 282, 285 (1997) (“The preemption doctrine is rooted in the supremacy clause of the United States Constitution.”), and therefore governed by this Rule.

Rule 302. Direct Appeals to the Supreme Court

(a) [no change]

(b) [no change]

(c) Summary Disposition.

(1) The Supreme Court, after the briefs have been filed, may dispose of any case without oral argument or opinion if no substantial question is presented or if jurisdiction is lacking.

(2) The Supreme Court, on its own motion or upon the motion of a party, before or after any brief has been filed or oral argument held, may summarily vacate and remand a judgment of the circuit court for non-compliance with Rule 19. Such vacatur shall not constitute a determination on the merits of the constitutional question presented.

Committee Comment

The amendment to Rule 302(c) is intended to permit, though not require, the Supreme Court to summarily vacate and remand any circuit court judgment that fails to comply with Rule 19.