

Proposal 14-01
Amends Supreme Court Rules 201, 204, 214, 216, 218 and 219 Committee Comments
Offered by the Illinois Judicial Conference Committee on Discovery Procedures

PROPOSED AMENDMENTS TO SUPREME COURT DISCOVERY RULES

Rule 201. General Discovery Provisions

(a) Discovery Methods.

Information is obtainable as provided in these rules through any of the following discovery methods: depositions upon oral examination or written questions, written interrogatories to parties, discovery of documents, objects or tangible things, inspection of real estate, requests to admit and physical and mental examination of persons. Duplication of discovery methods to obtain the same information should be avoided.

(b) Scope of Discovery.

(1) *Full Disclosure Required.* Except as provided in these rules, a party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking disclosure or of any other party, including the existence, description, nature, custody, condition, and location of any documents or tangible things, and the identity and location of persons having knowledge of relevant facts. The word "documents," as used in these rules, includes, but is not limited to, papers, photographs, films, recordings, memoranda, books, records, accounts, communications ~~and all retrievable information in computer storage~~ and electronically stored information as defined in Rule 201(b)(4).

(2) *Privilege and Work Product.* All matters that are privileged against disclosure on the trial, including privileged communications between a party or his agent and the attorney for the party, are privileged against disclosure through any discovery procedure. Material prepared by or for a party in preparation for trial is subject to discovery only if it does not contain or disclose the theories, mental impressions, or litigation plans of the party's attorney. The court may apportion the cost involved in originally securing the discoverable material, including when appropriate a reasonable attorney's fee, in such manner as is just.

(3) *Consultant.* A consultant is a person who has been retained or specially employed in anticipation of litigation or preparation for trial but who is not to be called at trial. The identity, opinions, and work product of a consultant are discoverable only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject matter by other means.

(4) "Electronically Stored Information. ("ESI") shall include any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations in any medium from which electronically stored information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form.

(c) Prevention of Abuse.

(1) *Protective Orders.* The court may at any time on its own initiative, or on motion of any party or witness, make a protective order as justice requires, denying, limiting, conditioning, or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression.

(2) *Supervision of Discovery.* Upon the motion of any party or witness, on notice to all parties, or on its own initiative without notice, the court may supervise all or any part of any discovery procedure.

(3) *Proportionality.* When making an order under this Section, the court may determine whether the likely burden or expense of the proposed discovery, including electronically stored information, outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

(d) Time Discovery May Be Initiated. Prior to the time all defendants have appeared or are required to appear, no discovery procedure shall be noticed or otherwise initiated without leave of court granted upon good cause shown.

(e) Sequence of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery shall not operate to delay any other party's discovery.

(f) Diligence in Discovery. The trial of a case shall not be delayed to permit discovery unless due diligence is shown.

(g) Discovery in Small Claims. Discovery in small claims cases is subject to Rule 287.

(h) Discovery in Ordinance Violation Cases. In suits for violation of municipal ordinances where the penalty is a fine only no discovery procedure shall be used prior to trial except by leave of court.

(i) Stipulations. If the parties so stipulate, discovery may take place before any person, for any purpose, at any time or place, and in any manner.

(j) Effect of Discovery Disclosure. Disclosure of any matter obtained by discovery is not conclusive, but may be contradicted by other evidence.

(k) Reasonable Attempt to Resolve Differences Required. The parties shall facilitate discovery under these rules and shall make reasonable attempts to resolve differences over discovery. Every motion with respect to discovery shall incorporate a statement that counsel

responsible for trial of the case after personal consultation and reasonable attempts to resolve differences have been unable to reach an accord or that opposing counsel made himself or herself unavailable for personal consultation or was unreasonable in attempts to resolve differences.

(l) Discovery Pursuant to Personal Jurisdiction Motion. (1) While a motion filed under section 2–301 of the Code of Civil Procedure is pending, a party may obtain discovery only on the issue of the court’s jurisdiction over the person of the defendant unless: (a) otherwise agreed by the parties; or (b) ordered by the court upon a showing of good cause by the party seeking the discovery that specific discovery is required on other issues. (2) An objecting party’s participation in a hearing regarding discovery, or in discovery as allowed by this rule, shall not constitute a waiver of that party’s objection to the court’s jurisdiction over the person of the objecting party.

(m) Filing Materials with the Clerk of the Circuit Court. No discovery may be filed with the clerk of the circuit court except upon leave of court or as authorized or required by local rule or these rules.

(n) Claims of Privilege. When information or documents are withheld from disclosure or discovery on a claim that they are privileged pursuant to a common law or statutory privilege, any such claim shall be made expressly and shall be supported by a description of the nature of the documents, communications or things not produced or disclosed and the exact privilege which is being claimed.

(o) Filing of Discovery Requests to Nonparties. Notwithstanding the foregoing, a copy of any discovery request under these rules to any nonparty shall be filed with the clerk in accord with Rule 104(b).

(p) Asserting Privilege or Work Product Following Discovery Disclosure. If information inadvertently produced in discovery is subject to a claim of privilege or of work-product protection, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, each receiving party must promptly return, sequester, or destroy the specified information and any copies; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the receiving party disclosed the information to third parties before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must also preserve the information until the claim is resolved.

(q) Specific Limitations on Discovery of Electronically Stored Information. The following categories of ESI generally are not discoverable, unless ordered by the court; (A) "deleted," "slack," "fragmented," or "unallocated" data on hard drives; (B) random access memory (RAM) or other ephemeral data; (C) on-line access data; (D) data in metadata fields that are frequently updated automatically; (E) backup data that is substantially duplicative of data that is more accessible elsewhere; (F) legacy data; (G) information whose retrieval cannot be accomplished without substantial additional programming or without transforming it into another form before search and retrieval can be achieved; and (H) other forms of ESI whose preservation or production requires extraordinary affirmative measures.

Committee Comments

(Revised ____2014)

Paragraph (b)

Paragraph (b), subparagraph (1) was amended to conform with the definition in newly added paragraph (b), subparagraph (4) and complies with the Federal Rules of Civil Procedure.

Paragraph (b), subparagraph (4) was added to provide a definition of electronically stored information that comports with the Federal Rule of Civil Procedure 34 (a)(1)(a) and is intended to be flexible and expansive as technology changes.

Paragraph (c)

Paragraph (c), subparagraph (3) was added to address the production of materials when benefits do not outweigh the burden of producing especially in the area of electronically stored information.

Paragraph (p)

This provision is referred to as the "clawback" provision and comports with the new Code of Ethics requirement that if an attorney receives privileged documents, he or she must notify the otherside.

Paragraph (q)

The Committee modeled this new provision after the Seventh Circuit's Principle 2.04(d).

(Revised June 1, 1995)

Paragraph (a)

Paragraph (a) of this rule sets forth the four discovery methods provided for and cautions against duplication. The committee considered and discarded a provision requiring leave of court before a party could request by one discovery method information already obtained through another. The committee concluded that there are circumstances in which it is justifiable to require answers to the same or related questions by different types of discovery procedures but felt strongly that the rules should discourage time-wasting repetition; hence the provision that duplication should be avoided. This language is precatory but in the application of the medical examination rule, and in the determination of what is unreasonable annoyance under paragraph (c) of this rule, dealing with prevention of abuse, such a phrase has the beneficial effect of

drawing particular attention to the question whether the information sought has already been made available to the party seeking it so that further discovery should be curtailed.

Paragraph (b)

Paragraph (b), subparagraph (1), sets forth generally the scope of discovery under the rules. The language "any matter relevant to the subject matter involved in the pending action" is the language presently employed in Federal Rule 26. The Federal rule also contains the sentence: "It is not ground for objection that the testimony will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." The Joint Committee Comments that accompanied former Illinois Rule 19--4 indicate that a similar sentence appearing in the pre-1970 Federal rule was deliberately omitted from the Illinois rule and suggest that perhaps the language "relating to the merits of the matter in litigation" was intended to limit discovery to evidence. This language was not construed in this restrictive fashion, however. (See *Monier v. Chamberlain*, 31 Ill. 2d 400, 202 N.E.2d 15 (1964), 66 Ill. App. 2d 472, 213 N.E.2d 425 (3d Dist. 1966), *aff'd*, 35 Ill. 2d 351, 221 N.E.2d 410 (1966); *People ex rel. Terry v. Fisher*, 12 Ill. 2d 231, 145 N.E.2d 588 (1957); *Krupp v. Chicago Transit Authority*, 8 Ill. 2d 37, 132 N.E.2d 532 (1956).) The only other effect the term "merits" could have would be to prevent discovery of information relating to jurisdiction, a result the committee thought undesirable. Accordingly, the phrase "relevant to the subject matter" was substituted for "relating to the merits of the matter in litigation" as more accurately reflecting the case law.

The phrase "identity and location of persons having knowledge of relevant facts," which appears in both former Rule 19--4 and Federal Rule 26, was retained. This language has been interpreted to require that the interrogating party frame his request in terms of some stated fact rather than simply in the language of the rule, because the use of the broad term "relevant facts" places on the answering party the undue burden of determining relevancy. See *Reske v. Klein*, 33 Ill. App. 2d 302, 305-06, 179 N.E.2d 415 (1st Dist. 1962); *Fedors v. O'Brien*, 39 Ill. App. 2d 407, 412-13, 188 N.E.2d 739 (1st Dist. 1963); *Nelson v. Pals*, 51 Ill. App. 2d 269, 273-75, 201 N.E.2d 187 (1st Dist. 1964); *Grant v. Paluch*, 61 Ill. App. 2d 247, 210 N.E.2d 35 (1st Dist. 1965).

The definition of "documents" in subparagraph (b)(1) has been expanded to include "all retrievable information in computer storage." This amendment recognizes the increasing reliability on computer technology and thus obligates a party to produce on paper those relevant materials which have been stored electronically.

The first sentence of subparagraph (b)(2) is derived from the first sentence of former Rule 19--5(1). The second sentence was new. It constituted a restatement of the law on the subject of work product as it had developed in the cases decided over the previous decade. See *Monier v. Chamberlain*, 35 Ill. 2d 351, 221 N.E.2d 410 (1966), *aff'g* 66 Ill. App. 2d 472, 213 N.E.2d 425 (3d Dist. 1966); *Stimpert v. Abdnour*, 24 Ill. 2d 26, 179 N.E.2d 602 (1962); *Day v. Illinois Power*

Co., 50 Ill. App. 2d 52, 199 N.E.2d 802 (5th Dist. 1964); *Oberkircher v. Chicago Transit Authority*, 41 Ill. App. 2d 68, 190 N.E.2d 170 (1st Dist. 3d Div. 1963); *Haskell v. Siegmund*, 28 Ill. App. 2d 1, 170 N.E.2d 393 (3d Dist. 1960); see also *City of Chicago v. Harrison-Halsted Building Corp.*, 11 Ill. 2d 431, 435, 143 N.E.2d 40 (1957), and *City of Chicago v. Shayne*, 46 Ill. App. 2d 33, 40, 196 N.E.2d 521 (1st Dist. 1964). The final sentence of this subparagraph was new and is intended to prevent penalizing the diligent and rewarding the slothful.

Discovery of consultants as provided by Rule 201(b)(3) will be proper only in extraordinary cases. In general terms, the "exceptional circumstances" provision is designed to permit discovery of consultants only when it is "impracticable" for a party to otherwise obtain facts or opinions on the same subject. Discovery under the corresponding Federal provision, Rule 26(b)(4)(B) of the Federal Rules of Civil Procedure, has generally been understood as being appropriate, for example, in cases in which an item of physical evidence is no longer available because of destructive testing and the adversary's consultant is the only source of information about the item, or in cases in which all the experts in a field have been retained by other parties and it is not possible for the party seeking discovery to obtain his or her own expert.

Paragraph (c)

Subparagraph (c)(1) covers the substance of former Rule 19--5(2). That rule listed a number of possible protective orders, ending with the catchall phrase, "or *** any other order which justice requires to protect party or deponent from annoyance, embarrassment, or oppression." Subparagraph (c)(2) substitutes the language "denying, limiting, conditioning, or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression." The list of possible discovery orders was deleted as unnecessary in view of the broader language of the new rule. The change in language is by way of clarification and was not intended to effect any change in the broad discretion to make protective orders that was provided by former Rule 19--5(2). See *Stowers v. Carp*, 29 Ill. App. 2d 52, 172 N.E.2d 370 (2d Dist. 1961).

Subparagraph (c)(2), like subparagraph (c)(1), is designed to clarify rather than change the Illinois practice. The committee was of the opinion that under certain circumstances it might be desirable for the trial court to direct that discovery proceed under its direct supervision, and that this practice might be unusual enough to call for special mention in the rule. The language was taken from section 3104 of the New York Civil Practice Act.

Paragraph (d)

Paragraph (d) of this rule makes it clear that except by order of court discovery procedures may not be initiated before the defendants have appeared or are required to appear. Former Rule 19--1 provided that depositions could not be taken before the defendants had appeared or were required to appear, and former Rule 19--11 made the time requirements for taking depositions applicable to the serving of interrogatories. The former rules, however, left the

plaintiff free to serve notice at any time after the commencement of the action of the taking of a deposition, just as long as the taking was scheduled after the date on which the defendants were required to appear, a practice which the bar has found objectionable.

Paragraph (e)

Paragraph (e), as adopted in 1967, provided that unless otherwise ordered "depositions and other discovery procedures shall be conducted in the sequence in which they are noticed or otherwise initiated." The effect of this provision was to give the last defendant served priority in discovery, since he could determine the date of his appearance. In 1978, this paragraph was amended to adopt the practice followed in the Federal courts since 1970, permitting all parties to proceed with discovery simultaneously unless the court orders otherwise. While empirical studies conducted preliminary to the proposals for amendment of the Federal discovery rules adopted in 1970 indicate that both defendants and plaintiffs are so often dilatory in beginning their discovery that a race for priority does not occur very frequently, affording a priority based on first notice in some cases can result in postponing the other parties' discovery for a very long time. (See Advisory Committee Note to Fed. R. Civ. P. 26.) In most cases it appears more efficient to permit each party to proceed with its discovery, whether by deposition or otherwise, unless in the interests of justice the establishment of priority seems to be called for. The amended rule reserves to the court the power to make such an order. In most instances, however, problems of timing should be worked out between counsel. See paragraph (k).

Paragraph (f)

Paragraph (f) of this rule is derived from the last sentence of former Rule 19--1. The language is unchanged except that it is made applicable to all discovery proceedings.

Paragraph (g)

Paragraph (g) of this rule is a cross-reference to Rule 287, which provides that discovery is not permitted without leave of court in small claims cases, defined in Rule 281 as actions for money not in excess of \$2,500, or for the collection of taxes not in excess of that amount.

Paragraph (h)

Rule 201 was amended in 1974 to add paragraph (h) and to reletter former paragraphs (h) and (i) as (i) and (j). Paragraph (h) extends to ordinance violation cases the principle applicable to small claims that discovery procedures under the rules may not be used without leave of court.

Paragraph (i)

Paragraph (i) of this rule makes the provisions of former Rule 19--3, dealing with stipulations for the taking of depositions, applicable to discovery in general. As originally

adopted this paragraph was (h). It was relettered (i) in 1974, when the present paragraph (h) was added.

Paragraph (j)

Paragraph (j) of this rule is derived from the last sentence of former Rule 20. The language is unchanged. As originally adopted, this was paragraph (i). It was relettered (j) when present paragraph (h) was added in 1974.

Paragraph (k)

Paragraph (k) was added in 1974. Patterned after the practice in the United States District Courts for the Eastern and Northern Districts of Illinois, it is designed to curtail undue delay in the administration of justice and to discourage motions of a routine nature.

Paragraph (k) was amended to remedy several problems associated with discovery. Language has been added to encourage attorneys to try and resolve discovery differences on their own. Also, committee members cited the problem of junior attorneys, who are not ultimately responsible for cases, perpetuating discovery disagreements. It was agreed that many discovery differences could be eliminated if the attorneys responsible for trying the case were involved in attempts to resolve discovery differences. Reasonable attempts must be made to resolve discovery disputes prior to bringing a motion for sanctions. Counsel responsible for the trial of a case are required to have or attempt a personal consultation before a motion with respect to discovery is initiated. The last sentence of paragraph (k) has been deleted, as the consequences of failing to comply with discovery are discussed in Rule 219.

Paragraph (l)

Paragraph (l) was added in 1981 to negate any possible inference from the language of section 20 of the Civil Practice Act that participation in discovery proceedings after making a special appearance to contest personal jurisdiction constitutes a general appearance and waives the jurisdictional objection, so long as the discovery is limited to the issue of personal jurisdiction.

Paragraph (m)

Paragraph (m) was added in 1989. The new paragraph allows the circuit courts to adopt local rules to regulate or prohibit the filing of designated discovery materials with the clerk. The identity of the affected materials should be designated in the local rules, as should any procedures to compel the filing of materials that would otherwise not be filed under the local rules.

Paragraphs (n) and (o)

Regarding paragraph (n), any claim of privilege with respect to a document must be stated specifically pursuant to this rule. Pursuant to paragraph (o), all discovery filed upon a nonparty shall be filed with the clerk of the court.

(March 28, 2002)

Paragraph (l)

The words “special appearance,” which formerly appeared in paragraph (1) of Rule 201(l), were replaced in 2002 with the word “motion” in order to conform to changes in terminology in section 2–301 of the Code of Civil Procedure (735 ILCS 5/2–301 (West 1998)).

Since the amendment to section 2–301 allows a party to file a combined motion, it is possible that discovery could proceed on issues other than the court’s jurisdiction over a party’s person prior to the court ruling on the objection to jurisdiction. While the court may allow discovery on issues other than the court’s jurisdiction over the person of the defendant prior to a ruling on the defendant’s objection to jurisdiction, it is expected that in most cases discovery would not be expanded by the court to other issues until the jurisdictional objection is ruled upon. It sometimes may be logical for the court to allow specific, requested discovery on other issues, for example, where a witness is about to die or leave the country, when the party requesting the additional discovery makes a *prima facie* showing that the party will suffer substantial injustice if the requested discovery is not allowed.

Paragraph (2) recognizes that discovery may proceed on other than jurisdictional issues before the court rules on the objecting party’s motion objecting to jurisdiction. Participation in discovery by the objecting party does not constitute a waiver by the objecting party’s challenge to jurisdiction.

(October 24, 2012)

Paragraph (m) was amended in 2012 to eliminate the filing of discovery with the clerk of the circuit court absent leave of court granted in individual cases based on limited circumstances. The rule is intended to minimize any invasion of privacy that a litigant may have by filing discovery in a public court file.

Rule 204. Compelling Appearance of Deponent

(a) Action Pending in This State.

(1) *Subpoenas.* Except as provided in paragraph (c) hereof: (i) the clerk of the court shall issue subpoenas on request; or (ii) subpoenas may be issued by an attorney admitted to practice in the State of Illinois who is currently counsel of record in the pending action. The subpoena may command the person to whom it is directed to produce documents or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted under these rules subject to any limitations imposed under Rules 201(c), and (q).

(2) *Service of Subpoenas.* A deponent shall respond to any lawful subpoena of which the deponent 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 deponent or his 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 deponent, restricted delivery, return receipt requested, showing to whom, date and address of delivery, with a check or money order for the fee and mileage enclosed.

(3) *Notice to Parties, et al.* Service of notice of the taking of the deposition of a party or person who is currently an officer, director, or employee of a party is sufficient to require the appearance of the deponent and the production of any documents or tangible things listed in the notice.

(4) *Production of Documents in Lieu of Appearance of Deponent.* The notice, order or stipulation to take a deposition may specify that the appearance of the deponent is excused, and that no deposition will be taken, if copies of specified documents or tangible things are served on the party or attorney requesting the same by a date certain. That party or attorney shall serve all requesting parties of record at least three days prior to the scheduled deposition, with true and complete copies of all documents, and shall make available for inspection tangible things, or other materials furnished, and shall file a certificate of compliance with the court. Unless otherwise ordered or agreed, reasonable charges by the deponent for production in accordance with this procedure shall be paid by the party requesting the same, and all other parties shall pay reasonable copying and delivery charges for materials they receive. A copy of any subpoena issued in connection with such a deposition shall be attached to the notice and immediately filed with the court, not less than 14 days prior to the scheduled deposition. The use of this procedure shall not bar the taking of any person's deposition or limit the scope of same.

(b) Action Pending in Another State, Territory, or Country. Any officer or person authorized by the laws of another State, territory, or country to take any deposition in this State, with or without a commission, in any action pending in a court of that State, territory, or country may petition the circuit court in the county in which the deponent resides or is employed or transacts business in person or is found for a subpoena to compel the appearance of the deponent or for an order to compel the giving of testimony by the deponent. The court may hear and act upon the petition with or without notice as the court directs.

(c) Depositions of Physicians. The discovery depositions of nonparty physicians being deposed in their professional capacity may be taken only with the agreement of the parties and the subsequent consent of the deponent or under a subpoena issued upon order of court. A party shall pay a reasonable fee to a physician for the time he or she will spend testifying at any such deposition. Unless the physician was retained by a party for the purpose of rendering an opinion at trial, or unless otherwise ordered by the court, the fee shall be paid by the party at whose instance the deposition is taken.

(d) Noncompliance by Nonparties: Body Attachment.

(1) An order of body attachment upon a nonparty for noncompliance with a discovery order or subpoena shall not issue without proof of personal service of the rule to show cause or order of contempt upon the nonparty.

(2) The service of the rule to show cause or order of contempt upon the nonparty, except when the rule or order is initiated by the court, shall include a copy of the petition for rule and the discovery order or subpoena which is the basis for the petition for rule.

(3) The service of the rule to show cause or order of contempt upon the nonparty shall be made in the same manner as service of summons provided for under sections 2–202, 2–203(a)(1) and 2–203.1 of the Code of Civil Procedure.

Committee Comments

(Revised June 1, 1995)

Paragraph (a) of this rule was revised effective June 23, 1967, to divide it into three subparagraphs and add the material contained in subparagraph (a)(2), dealing with service of subpoenas.

The first sentence of the subparagraph (a)(2) states existing law. (*Chicago and Aurora R.R. Co. v. Dunning* (1857), 18 Ill. 494.) The second sentence simplifies proof of actual notice when service is made by certified or registered mail. It was amended in 1978 to conform its requirements to presently available postal delivery service. See Committee Comments to Rule 105.

Subparagraphs (a)(1) and (a)(3), without their present subtitles, appeared as paragraph (a) of Rule 204(a) as adopted effective January 1, 1967. New at that time was the provision now in subparagraph (a)(1) making an order of the court a prerequisite to the issuance of subpoena for the discovery deposition of a physician or surgeon. Also new in the 1967 rule was the use of the term "employee" instead of the former "managing agent" in what is now subparagraph (a)(3). The phrase "and no subpoena is necessary" which appeared in former Rule 19--8(1) (effective January 1, 1956), on which Rule 204(a) was based, was placed there to emphasize a change in practice to which the bar had been accustomed by 1967, and it was deleted in the 1967 revision as no longer needed.

Subparagraph (4) of paragraph (a) sets forth the procedures to be followed in those instances where the production of documents or tangible things by an individual may obviate the need for taking that person's deposition. The rule recognizes that subpoenas must be directed to individuals, not inanimate objects. Existing law regarding privilege and permissible discovery in a given case is unaffected by the rule. (See *Lewis v. Illinois Central R.R. Co.*, 234 Ill. App. 3d 669 (5th Dist. 1992).) The rule requires disclosure to all parties with prompt and complete production of all materials received, regardless of whether materials in addition to those specified are furnished by the deponent.

Paragraph (b) was not affected by the June 23, 1967, amendment. It was derived from former Rule 19--8(2) as it stood before 1967.

In 1985 paragraph (a) was amended and paragraph (c) was added to regulate the practice of compelling physicians and surgeons to appear to be deposed in their professional capacity and to set guidelines concerning professional fees which may, by agreement, be paid to physicians and surgeons for attending such depositions. Traditionally, expert witnesses are in the same position as other witnesses with respect to their fees. (*In re Estate of James* (1956), 10 Ill. App. 2d 232.) Physicians and other experts subpoenaed to testify may not refuse to do so on the ground that they are entitled to be paid some additional fee on the basis of being an expert. (*Dixon v. People* (1897), 168 Ill. 179.) Expert witnesses, like other witnesses, normally are entitled only to \$20 per day and 20 cents per mile of necessary travel. (*Falkenthal v. Public Building Com.* (1983), 111 Ill. App. 3d 703.) As a practical matter, however, physicians and surgeons usually do request a professional fee, in addition to the statutory witness fee, to reimburse them for the time they spend testifying at depositions, and the party at whose instance the physician or surgeon is subpoenaed is normally loathe to refuse. This rule is intended to regulate this practice. A party may agree to pay a reasonable professional fee to a physician or surgeon for the time he or she will spend testifying at any deposition. The fee should be paid only after the doctor has testified, and it should not exceed an amount which reasonably reimburses the doctor for the time he or she actually spent testifying at deposition. Unless the doctor was retained for the purpose of rendering an expert opinion at trial, or unless otherwise ordered by the court, the party at whose instance the deposition is being taken would be responsible for paying the professional fee, as well as other fees and expenses provided for in Rule 208.

Rule 204(c) implies that the trial court will exercise discretion in ordering the issuance of a subpoena upon a physician or surgeon and will refuse to do so unless there is some preliminary showing of good cause, regardless of whether there has been an objection by opposing counsel. At a minimum the moving party must be able to show that he has received the medical records available in the case and nevertheless has good reason to believe that a deposition is necessary. If appropriate, the court may require that such a showing of good cause be accomplished by an affidavit accompanying the motion.

Paragraph (c) was amended in 1989 to provide that a party "shall pay," rather than "may agree to pay," a reasonable fee to a physician or surgeon for the time the physician or surgeon will spend testifying at any such deposition. This change will clarify the responsibility of parties to not intrude on the time of physicians and surgeons without seeing to it that the physicians or

surgeons receive reasonable compensation for the time they spend undergoing questioning on deposition.

The reference in paragraph (c) to "surgeons" has been stricken because it is redundant. Moreover, paragraph (c) is made applicable only to "nonparty" physicians. The protection afforded a physician by paragraph (c), including the payment of a fee for time spent, has no application to a physician who is a party to the suit. Such protection should likewise be unavailable to nonparty physicians who are closely associated with a party, such as physicians who are stockholders in or officers of a professional corporation named as a defendant, or a physician who is a respondent in discovery.

Rule 214. Discovery of Documents, Objects, and Tangible Things--Inspection of Real Estate

(a) Any party may by written request direct any other party to produce for inspection, copying, reproduction photographing, testing or sampling specified documents, including electronically stored information as defined under Rule 201 (b)(4), objects or tangible things, or to permit access to real estate for the purpose of making surface or subsurface inspections or surveys or photographs, or tests or taking samples, or to disclose information calculated to lead to the discovery of the whereabouts of any of these items, whenever the nature, contents, or condition of such documents, objects, tangible things, or real estate is relevant to the subject matter of the action. The request shall specify a reasonable time, which shall not be less than 28 days except by agreement or by order of court, and the place and manner of making the inspection and performing the related acts.

(b) With regard to electronically stored information as defined in Rule 201 (b)(4), if a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(c) One copy of the request shall be served on all other parties entitled to notice. A party served with the written request shall (1) ~~produce the requested documents~~ identify all materials in the party's possession responsive to the request and copy or provide reasonable opportunity for copying or inspections. Production of documents shall be as they are kept in the usual course of business or organized and labeled to correspond with the categories in the request, and all retrievable information in computer storage in printed form or (2) serve upon the party so requesting written objections on the ground that the request is improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be complied with. Any objection to the request or the refusal to respond shall be heard by the court upon prompt notice and motion of the party submitting the request. If the party claims that the item is not in his or her possession or control or that he or she does not have information calculated to lead to the discovery of its whereabouts, the party may be ordered to submit to examination in open court or by deposition regarding such claim. The ~~party producing party documents~~ shall furnish an affidavit stating whether the production is complete in accordance with the request. Copies of identifications, objections and affidavits of completeness shall be served on all parties entitled to notice.

(d) A party has a duty to seasonably supplement any prior response to the extent of documents, objects or tangible things which subsequently come into that party's possession or control or become known to that party.

(e) This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon real estate.

Committee Comments

(Revised ____2014)

Paragraphs (a) and (b)

The Committee reorganized Rule 214 as well as creating new paragraph (b), which is modeled after Federal Rule of Civil Procedure 34(b).

Paragraph (c)

The Committee's intent was to assist in the area of electronically stored information by allowing for identification of materials.

(Revised June 1, 1995)

As originally promulgated Rule 214 was patterned after former Rule 17. It provided for discovery of documents and tangible things, and for entry upon real estate, in the custody or control of any "party or other person," by moving the court for an order compelling such discovery. In 1974, the rule was amended to eliminate the requirement of a court order. Under the amended rule a party seeking production of documents or tangible things or entry on real estate in the custody or control of any other party may serve the party with a request for the production of the documents or things, or for permission to enter upon the real estate. The party receiving the request must comply with it or serve objections. If objections are served, the party seeking the discovery may serve a notice of hearing on the objections, or in case of failure to respond to the request may move the court for an order under Rule 219(a).

The request procedure may be utilized only when discovery is sought from a party to the action. Discovery of documents and tangible things in the custody or control of a person not a party may be obtained by serving him with a subpoena *duces tecum* for the taking of his deposition. The last paragraph of the rule was added to indicate that the rule is not preemptive of an independent action for discovery in the nature of a bill in equity. Such an action can be employed, then, in the occasional case in which a party seeks to inspect real estate that is in the custody or control of a person not a party to the main action.

The first paragraph has been revised to require a party producing documents to produce those documents organized in the order in which they are kept in the usual course of business, or organized and labeled to correspond with the categories in the request. This revision requires the party producing documents and that party's attorney to make a good-faith review of documents produced to ensure full compliance with the request, but not to burden the requesting party with nonresponsive documents.

The failure to organize the requested documents as required by this rule, or the production of nonresponsive documents intermingled among the requested documents, constitutes a discovery abuse subject to sanctions under Rule 219.

The first paragraph has also been amended to require a party to include in that party's production response all responsive information in computer storage in printed form. This change is intended to prevent parties producing information from computer storage on storage disks or in any other manner which tends to frustrate the party requesting discovery from being able to access the information produced.

Rule 201(b) has also been amended to include in the definition of "documents" all retrievable information in computer storage, so that there can be no question but that a producing party must search its computer storage when responding to a request to produce documents pursuant to this rule.

The last sentence of the first paragraph has also been revised to make mandatory the requirement that the party producing documents furnish an affidavit stating whether the production is complete in accordance with the request. Previously, the party producing documents was not required to furnish such an affidavit unless requested to do so.

The second paragraph is new. This paragraph parallels the similar requirement in Rule 213 that a party must seasonably supplement any prior response to the extent that documents, objects or tangible things subsequently come into that party's possession or control or become known to that party. A party who has knowledge of documents, objects or tangible things responsive to a previously served request must disclose that information to the requesting party whether or not the actual documents, objects or tangible things are in the possession of the responding party. To the extent that responsive documents, objects or tangible things are not in the responding party's possession, the compliance affidavit requires the producing party to identify the location and nature of such responsive documents, objects or tangible things. It is the intent of this rule that a party must produce all responsive documents, objects or tangible things in its possession, and fully disclose the party's knowledge of the existence and location of responsive documents, objects or tangible things not in its possession so as to enable the requesting party to obtain the responsive documents, objects or tangible things from the custodian.

Rule 216. Admission of Fact or of Genuineness of Documents

(a) Request for Admission of Fact. A party may serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request. A copy of the request for admission shall be served on all parties entitled to notice.

(b) Request for Admission of Genuineness of Document. A party may serve on any other party a written request for admission of the genuineness of any relevant documents described in the request. Copies of the documents shall be served with the request unless copies have already been furnished.

(c) Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission. If good faith requires that a party deny only a part, or requires qualification, of a matter of which an admission is requested, the party shall specify so much of it as is true and deny only the remainder. Any objection to a request or to an answer shall be heard by the court upon prompt notice and motion of the party making the request. The response to the request, sworn statement of denial, or written objection, shall be served on all parties entitled to notice.

(d) Public Records. If any public records are to be used as evidence, the party intending to use them may prepare a copy of them insofar as they are to be used, and may seasonably present the copy to the adverse party by notice in writing, and the copy shall thereupon be admissible in evidence as admitted facts in the case if otherwise admissible, except insofar as its inaccuracy is pointed out under oath by the adverse party in an affidavit filed and served within 28 days after service of the notice.

(e) Effect of Admission. Any admission made by a party pursuant to request under this rule is for the purpose of the pending action and any action commenced pursuant to the authority of section 13–217 of the Code of Civil Procedure (735 ILCS 5/13–217) only. It does not constitute an admission by him for any other purpose and may not be used against him in any other proceeding.

(f) Number of Requests. The maximum number of requests for admission a party may serve on another party is 30, unless a higher number is agreed to by the parties or ordered by the court for good cause shown. If a request has subparts, each subpart counts as a separate request.

(g) Special Requirements. A party must: (1) prepare a separate paper which contains only the requests and the documents required for genuine document requests; (2) serve this paper separate from other papers; and (3) put the following warning in a prominent place on the first page in 12-

point or larger boldface type: **“WARNING: If you fail to serve the response required by Rule 216 within 28 days after you are served with this paper, all the facts set forth in the requests will be deemed true and all the documents described in the requests will be deemed genuine.”**

Committee Comments

(Revised July 1, 1985)

This rule is derived from former Rule 18. Despite the usefulness of requests for admission of facts in narrowing issues, such requests seem to have been used very little in Illinois practice. The committee was of the opinion that perhaps this has resulted in part from the fact that they are provided for in the text of a rule that reads as if it relates primarily to admission of the genuineness of documents. Accordingly, it has rewritten the rule to place the authorization for request for admission of facts in a separate paragraph. No change in the substance of former Rule 18 was intended.

Subparagraph (e) was amended in 1985 to resolve an apparent conflict about whether admissions are carried over into subsequent cases between the same parties, involving the same subject matter, as are the fruits of other discovery activities (see Rule 212(d)). Relief from prior admissions is available to the same extent in the subsequent action as in the case which was dismissed or remanded.

(October 1, 2010)

Paragraphs (f) and (g) are designed to address certain problems with Rule 216, including the service of hundreds of requests for admission. For the vast majority of cases, the limitation to 30 requests now found in paragraph (f) will eliminate this abusive practice. Other noted problems include the bundling of discovery requests to form a single document into which the requests to admit were intermingled. This practice worked to the disadvantage of certain litigants, particularly pro se litigants, who do not understand that failure to respond within the time allowed results in the requests being deemed admitted. Paragraph (g) provides for requests to be contained in a separate paper containing a boldface warning regarding the effect of the failure to respond within 28 days. Consistent with *Vision Point of Sale Inc. v. Haas*, 226 Ill.2d 334 (2007), trial courts are vested with discretion with respect to requests for admission.

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 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 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.

(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.

Committee Comments

(Revised ____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.

(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.

(May 31, 2002)

This rule is amended to conform to the changes in terminology made in Supreme Court Rule 213.

(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.

Rule 219. Consequences of Refusal to Comply with Rules or Order Relating to Discovery or Pretrial Conferences

(a) Refusal to Answer or Comply with Request for Production. If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on notice to all persons affected thereby, the proponent of the question may move the court for an order compelling an answer. If a party or other deponent refuses to answer any written question upon the taking of his or her deposition or if a party fails to answer any interrogatory served upon him or her, or to comply with a request for the production of documents or tangible things or inspection of real property, the proponent of the question or interrogatory or the party serving the request may on like notice move for an order compelling an answer or compliance with the request. If the court finds that the refusal or failure was without substantial justification, the court shall require the offending party or deponent, or the party whose attorney advised the conduct complained of, or either of them, to pay to the aggrieved party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and the court finds that the motion was made without substantial justification, the court shall require the moving party to pay to the refusing party the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.

(b) Expenses on Refusal to Admit. If a party, after being served with a request to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter of fact, the requesting party may apply to the court for an order requiring the other party to pay the requesting party the reasonable expenses incurred in making the proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made.

(c) Failure to Comply with Order or Rules. If a party, or any person at the instance of or in collusion with a party, unreasonably fails to comply with any provision of part E of article II of the rules of this court (Discovery, Requests for Admission, and Pretrial Procedure) or fails to comply with any order entered under these rules, the court, on motion, may enter, in addition to remedies elsewhere specifically provided, such orders as are just, including, among others, the following:

- (i) That further proceedings be stayed until the order or rule is complied with;
- (ii) That the offending party be debarred from filing any other pleading relating to any issue to which the refusal or failure relates;
- (iii) That the offending party be debarred from maintaining any particular claim, counterclaim, third-party complaint, or defense relating to that issue;
- (iv) That a witness be barred from testifying concerning that issue;

(v) That, as to claims or defenses asserted in any pleading to which that issue is material, a judgment by default be entered against the offending party or that the offending party's action be dismissed with or without prejudice;

(vi) That any portion of the offending party's pleadings relating to that issue be stricken and, if thereby made appropriate, judgment be entered as to that issue; or

(vii) That in cases where a money judgment is entered against a party subject to sanctions under this subparagraph, order the offending party to pay interest at the rate provided by law for judgments for any period of pretrial delay attributable to the offending party's conduct.

In lieu of or in addition to the foregoing, the court, upon motion or upon its own initiative, may impose upon the offending party or his or her attorney, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred as a result of the misconduct, including a reasonable attorney fee, and when the misconduct is wilful, a monetary penalty. When appropriate, the court may, by contempt proceedings, compel obedience by any party or person to any subpoena issued or order entered under these rules. Notwithstanding the entry of a judgment or an order of dismissal, whether voluntary or involuntary, the trial court shall retain jurisdiction to enforce, on its own motion or on the motion of any party, any order imposing monetary sanctions, including such orders as may be entered on motions which were pending hereunder prior to the filing of a notice or motion seeking a judgment or order of dismissal.

Where a sanction is imposed under this paragraph (c), the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order.

(d) Abuse of Discovery Procedures. The court may order that information obtained through abuse of discovery procedures be suppressed. If a party wilfully obtains or attempts to obtain information by an improper discovery method, wilfully obtains or attempts to obtain information to which that party is not entitled, or otherwise abuses these discovery rules, the court may enter any order provided for in paragraph (c) of this rule.

(e) Voluntary Dismissals and Prior Litigation. A party shall not be permitted to avoid compliance with discovery deadlines, orders or applicable rules by voluntarily dismissing a lawsuit. In establishing discovery deadlines and ruling on permissible discovery and testimony, the court shall consider discovery undertaken (or the absence of same), any misconduct, and orders entered in prior litigation involving a party. The court may, in addition to the assessment of costs, require the party voluntarily dismissing a claim to pay an opposing party or parties reasonable expenses incurred in defending the action including but not limited to discovery expenses, expert witness fees, reproduction costs, travel expenses, postage, and phone charges.

Committee Comments

(Revised _____, 2014)

The Committee believes that the rule is sufficient to cover sanction issues as they relate to electronic discovery. The rulings in *Shimanovsky v. GMC*, 181 Ill. 2d 112 (Ill. 1998) and *Adams v. Bath and Body Works*, 358 Ill.App.3d 387 contain detailed discussion of sanctions for discovery violations for the loss or destruction of relevant evidence and for the separate and distinct claim for the tort of negligent spoliation of evidence.

(Revised June 1, 1995)

Paragraphs (a) and (b)

Paragraphs (a) and (b) of this rule were derived from former Rules 19--12(1) and (2). In 1974, Rule 214 was amended to provide for a request procedure in the production of documents and tangible things and inspection of real estate, eliminating the requirement that the party seeking such discovery obtain an order of court. Paragraph (a) of Rule 219 was amended at the same time to extend its coverage to cases in which a party refuses to comply with a request under amended Rule 214.

Paragraph (c)

Paragraph (c) is derived from former Rule 19--12(3). The paragraph has been changed to permit the court to render a default judgment against either party. This is consistent with Federal Rule 37(b)(iii), and makes effective the remedy against a balky plaintiff. The remedy was previously limited to dismissal (although it is to be noted that in former Rule 19--12(3) nonsuit and dismissal were both mentioned), and the plaintiff could presumably bring his action again, while in case of the defendant the answer could be stricken and the case decided on the complaint alone. The sanctions imposed must relate to the issue to which the misconduct relates and may not extend to other issues in the case.

Subparagraph (c) was amended in 1985 to make it clear that the sanctions provided for therein applied to violations of new Rules 220 and 222, as well as any discovery rules that may be enacted in the future. Subparagraph (c) was further amended in 1985 to recognize the trial court's continuing jurisdiction to enforce any monetary sanctions imposed thereunder for any abuse of discovery in any case in which an order prescribing such sanctions was entered before any judgment or order of dismissal, whether voluntary or involuntary (see *North Park Bus Service, Inc. v. Pastor* (1976), 39 Ill. App. 3d 406), or to order such monetary sanctions, and enforce them, in any case in which a motion for sanctions was pending before the trial court prior to the filing of a notice or motion seeking a judgment or order of dismissal, whether voluntary or involuntary. This change in no way compromises a plaintiff's right to voluntarily dismiss his action under section 2--1009 of the Code of Civil Procedure (Ill. Rev. Stat. 1983, ch. 110, par. 2-

-1009). It simply makes it clear that a party may not avoid the consequences of an abuse of the discovery process by filing a notice of voluntary dismissal.

Paragraph (c) has been expanded to provide: (1) for the imposition of prejudgment interest in those situations where a party who has failed to comply with discovery has delayed the entering of a money judgment; (2) the imposition of a monetary penalty against a party or that party's attorney for a wilful violation of the discovery rules; and (3) for other appropriate sanctions against a party or that party's attorney including the payment of reasonable expenses incurred as a result of the misconduct together with a reasonable attorney fee.

Paragraph (c) is expanded first by adding subparagraph (vii), which specifically allows the trial court to include in a judgment, interest for any period of pretrial delay attributable to discovery abuses by the party against whom the money judgment is entered.

Paragraph (c) has also been expanded to provide for the imposition of a monetary penalty against a party or that party's attorney as a result of a wilful violation of the discovery rules. See *Safeway Insurance Co. v. Graham*, 188 Ill. App. 3d 608 (1st Dist. 1989). The decision as to whom such a penalty may be payable is left to the discretion of the trial court based on the discovery violation involved and the consequences of that violation. This language is intended to put to rest any doubt that a trial court has the authority to impose a monetary penalty against a party or that party's attorney. See *Transamerica Insurance Group v. Lee*, 164 Ill. App. 3d 945 (1st Dist. 1988) (McMorrow, J., dissenting).

The last full paragraph of paragraph (c) has also been amended to give greater discretion to the trial court to fashion an appropriate sanction against a party who has violated the discovery rules or orders. The amended language parallels that used in Rule 137. This paragraph has also been amended to require a judge who imposes a sanction under paragraph (c) to specify the reasons and basis for the sanction imposed either in the judgment order itself or in a separate written order. This language is the same as that now contained in Rule 137.

Paragraph (d)

Paragraph (d) is new. It extends the sanctions provided for in the new rule to general abuse of the discovery rules.

Paragraph (e)

Paragraph (e) addresses the use of voluntary dismissals to avoid compliance with discovery rules or deadlines, or to avoid the consequences of discovery failures, or orders barring witnesses or evidence. This paragraph does not change existing law regarding the right of a party to seek or obtain a voluntary dismissal. However, this paragraph does clearly dictate that when a case is refiled, the court shall consider the prior litigation in determining what discovery will be permitted, and what witnesses and evidence may be barred. The consequences of noncompliance with discovery deadlines, rules or orders cannot be eliminated by taking a voluntary dismissal.

Paragraph (e) further authorizes the court to require the party taking the dismissal to pay the out-of-pocket expenses actually incurred by the adverse party or parties. This rule reverses the holdings in *In re Air Crash Disaster at Sioux City, Iowa, on July 19, 1989*, 259 Ill. App. 3d 231, 631 N.E.2d 1302 (1st Dist. 1994), and *Galowich v. Beech Aircraft Corp.*, 209 Ill. App. 3d 128, 568 N.E.2d 46 (1st Dist. 1991). Paragraph (e) does not provide for the payment of attorney fees when an action is voluntarily dismissed.

(March 28, 2002)

This rule is amended to conform to the changes in terminology made in Supreme Court Rule 213.