M.R. 3140

IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS

Order entered January 17, 2018.

(Deleted material is struck through, and new material is underscored.)

On December 29, 2017, Rules 108, 113, 138, 208, 215, 272, and 292 were amended but contained clerical errors, which are corrected *nunc pro tunc* to January 1, 2018, as shown below.

Corrected Rule 108

Rule 108. Explanation of Rights of Heirs and Legatees When Will Admitted or Denied Probate

(a) Wills Originally Proved. When a will is admitted or denied admission to probate under section 6-4 or section 7-4 of the Probate Act of 1975, as amended, the information mailed to each heir and legatee under section 6-10 shall include an explanation of the rights of interested persons prepared by utilizing, or substantially adopting the appearance and content of, Form 1 or Form 2 provided in the Article II Forms Appendix. (Form 1 should be used when the will is admitted to probate and Form 2 when probate is denied.)

When a will is admitted or denied admission to probate under section 6-4 or section 7-4 of the Probate Act of 1975, as amended, and where notice under section 6-10 is given by publication, such notice shall be prepared by utilizing, or substantially adopting the appearance and content of, Form 3 or Form 4 provided in the Article II Forms Appendix. (Form 3 should be used when the will is admitted to probate and Form 4 when probate is denied.)

(b) Foreign Wills Proved by Copy. When a will is admitted or denied admission to probate under section 7-3 of the Probate Act of 1975, as amended ("Proof of foreign will by copy"), the information mailed to each heir and legatee under section 6-10 of the Probate Act of 1975, as amended, shall include an explanation of the rights of interested persons prepared by utilizing, or substantially adopting the appearance and content of, Form 1 or Form 2 provided in the Article II Forms Appendix. (Form 1 should be used when the will is admitted to probate and Form 2 when probate is denied.)

When a will is admitted or denied admission to probate under section 7-3 of the Probate Act of 1975, as amended ("Proof of foreign will by copy"), and where notice under section 6-10 is given by publication, such notice shall be prepared by utilizing, or substantially adopting the appearance and content of, Form 3 or Form 4 provided in the Article II Forms Appendix. (Form 3 should be used when the will is admitted to probate and Form 4 when probate is denied.)

Adopted February 1, 1980, effective March 1, 1980; amended August 9, 1983, effective October 1, 1983; amended April 1, 1992, effective August 1, 1992; amended May 30, 2008, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018.

FILED
JAN 17 2018
SUPREME COURT
CLERK

Committee Comments

(February 1980)

This rule was adopted pursuant to amended section 6-10(a) of the Probate Act of 1975, effective January 1, 1980. The first blank in forms 3 and 4 is for the names of heirs and legatees whose addresses are unknown and for insertion of "unknown heirs" if unknown heirs are referred to in the petition.

Corrected Rule 113

Rule 113. Practice and Procedure in Mortgage Foreclosure Cases

(a) Applicability of the Rule. The requirements of this rule supplement, but do not replace, the requirements set forth in the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq.*) and are applicable only to those foreclosure actions filed on or after the effective date of May 1, 2013.

(b) Supporting Documents for Complaints. In addition to the documents listed in section 15-1504 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1504), a copy of the note, as it currently exists, including all indorsements and allonges, shall be attached to the mortgage foreclosure complaint at the time of filing.

(c) Prove-up Affidavits.

(1) Requirement of Prove-up Affidavits. All plaintiffs seeking a judgment of foreclosure, under section 15-1506 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1506), by default or otherwise, shall be required to submit an affidavit in support of the amounts due and owing under the note when they file any motion requesting a judgment of default against a mortgagor or a judgment of foreclosure.

(2) Content of Prove-up Affidavits. All affidavits submitted in support of entry of a judgment of foreclosure, default or otherwise, shall contain, at a minimum, the following information:

(i) The identity of the affiant and an explanation as to whether the affiant is a custodian of records or a person familiar with the business and its mode of operation. If the affiant is a person familiar with the business and its mode of operation, the affidavit shall explain how the affiant is familiar with the business and its mode of operation.

(ii) An identification of the books, records, and/or other documents in addition to the payment history that the affiant reviewed and/or relied upon in drafting the affidavit, specifically including records transferred from any previous lender or servicer. The payment history must be attached to the affidavit in only those cases where the defendant(s) filed an appearance or responsive pleading to the complaint for foreclosure.

(iii) The identification of any computer program or computer software that the entity relies on to record and track mortgage payments. Identification of the computer program or computer software shall also include the source of the information, the method and time of preparation of the record to establish that the computer program produces an accurate payment history, and an explanation as to why the records should be considered

"business records" within the meaning of the law.

(3) Additional Evidence. The affidavit shall contain any additional evidence, as may be necessary, in connection with the party's right to enforce the instrument of indebtedness.

(4) Form of Prove-up Affidavits. The affidavit prepared in support of entry of a judgment of foreclosure, by default or otherwise, shall not have a stand-alone signature page if formatting allows the signature to begin on the last page of the affiant's statements. The affidavit prepared shall, at a minimum, be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

If executed within the boundaries of Illinois, the affidavit may be signed pursuant to section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109) rather than being notarized.

(d) Defaults.

(1) Notice Required. In all mortgage foreclosure cases where the borrower is defaulted by court order, a notice of default and entry of judgment of foreclosure shall be prepared by the attorney for plaintiff and shall be mailed by the Clerk of the Circuit Court for each judicial circuit. Within two business days after the entry of default, the attorney for plaintiff shall prepare the notice in its entirety, file it with the Clerk of the Circuit Court, and provide the Clerk with one copy for mailing to each borrower address specified in the notice. Within five business days after the entry of default, the Clerk of the Circuit Court shall mail, by United States Postal Service, a copy of the notice of default and entry of judgment of foreclosure to the address(es) provided by the attorney for the plaintiff in an envelope bearing the return address of the Clerk of the Circuit Court and file proof thereof. The notice shall be mailed to the property address or the address on any appearance or other document filed by any defendant. Any notices returned by the United States Postal Service as undeliverable shall be filed in the case file maintained by the Clerk of the Circuit Court.

(2) Form of Notice. The notice of default and entry of judgment of foreclosure shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(e) Effect on Judgment and Orders. Neither the failure to send the notice required by paragraph (d)(i) nor any errors in preparing or sending the notice shall affect the legal validity of the order of default, the judgment of foreclosure, or any other orders entered pursuant to the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq.*) and cannot be the basis for vacating an otherwise validly entered order.

(f) Judicial Sales. In addition to the requirements for judicial sales set forth in sections 15-1506 and 15-1507 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1506, 15-1507) the following will apply to mortgage foreclosure sales:

(1) Notice of Sale. Not fewer than 10 business days before the sale, the attorney for the plaintiff shall send notice by mail to all defendants, including defendants in default, of the foreclosure sale date, time, and location of the sale.

(2) Selling Officers. Any foreclosure sale held pursuant to section 15-1507 may be conducted by a private selling officer who is appointed in accordance with section 15-1506(f)(3).

(3) Surplus Funds. If a judicial foreclosure sale held pursuant to Section 15-1507 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1507) results in the existence of a surplus of

funds exceeding the amount due and owing as set forth in the judgment of foreclosure, the attorney for the plaintiff shall send a special notice to the mortgagors advising them of the surplus funds and enclosing a form for presentment of the motion to the court for the funds.

(g) Special Notice of Surplus Funds. The special notice shall be mailed and shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(h) Petition for Turnover of Surplus Funds. Each judicial circuit shall make readily available a form petition for turnover of surplus funds to be included in the Special Notice of Surplus Funds required to be mailed by the attorney for plaintiffs. The petition shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(i) Deceased Mortgagors. In all mortgage foreclosure cases where the mortgagor or mortgagors is or are deceased, and no estate has been opened for the deceased mortgagor(s), the court shall, on motion of a party, appoint a special representative to stand in the place of the deceased mortgagor(s) who shall act in a manner similar to that provided by section 13-209 of the Illinois Code of Civil Procedure (735 ILCS 5/13-209).

Adopted Feb. 22, 2013, eff. May 1, 2013; amended Apr. 8, 2013, eff. May 1, 2013; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

(February 22, 2013)

On April 11, 2011, the Illinois Supreme Court created the Special Supreme Court Committee on Mortgage Foreclosures and charged it with the following tasks: investigating the procedures used throughout the State of Illinois in mortgage foreclosure proceedings; studying relevant Illinois Supreme Court Rules and local rules that directly or indirectly affect such proceedings; analyzing the procedures adopted in other states in response to the unprecedented number of foreclosure filings nationwide; and reviewing legislative proposals pending in the Illinois General Assembly that may impact the mortgage foreclosure rules for the state. To meet this charge, the Committee established subcommittees, one of which was the Practice and Procedures Subcommittee. The Practice and Procedures Subcommittee submitted proposals for changes to the practice and procedures for mortgage foreclosure cases for discussion at a public hearing held on April 27, 2012. After consideration of comments and discussion at the public hearing, the Committee proposed this new rule governing mortgage foreclosure practice and procedure.

Paragraph (b) is derived from the need to address evidentiary issues that often arise during the course of a mortgage foreclosure. The new requirement to attach a copy of the note, as it currently exists with all indorsements and allonges, supplements the Illinois Mortgage Foreclosure Law to provide this necessary document to the defendant and the court at the outset. Including this additional document will prevent unnecessary delays caused by motion practice and discovery often used by defendants.

In drafting this section of the rule, the Committee took into consideration the positions of both the judiciary and comments provided at the public hearing regarding attaching a copy of all

assignments to the complaint. The Committee members recognized that with the increase in transfers of mortgages and notes, Illinois courts have seen a dramatic increase in assertions by mortgagors that the mortgagee lacks standing to bring the foreclosure complaint. Quite often, mortgagors who ignore the judicial process until after a foreclosure or sale has occurred have raised standing issues as a defense, but have been told that their claim was forfeited by the failure to raise it in a timely manner. The Committee considered that as a matter of judicial economy, requiring that all executed assignments of the mortgage be attached at the time of filing could provide current documentation at the outset to all defendants and the circuit court demonstrating how the plaintiff has standing to file the complaint. However, due to industry changes in the documentation requirements for mortgage assignments over the past two decades, a requirement to attach all copies of assignments to the complaint at the time of filing proved to be impractical and overly burdensome for practitioners given the current volume of foreclosures statewide. This rule does not prohibit the attachment of such assignments should a plaintiff choose to do so. This rule also does not preclude the requirement of submission of all assignments at a later date in the litigation should the appropriate issues present themselves and presentation of the documents to the court and litigants becomes necessary.

Paragraph (c) addresses some of the many issues that arise from document handling procedures by lenders and servicers. Illinois courts, along with courts nationwide, have faced issues relating to "robo-signing" practices at major lenders, where affidavits were not properly notarized or where the affiant did not actually review any of the pertinent loan records. In addition to questionable document handling procedures, circuit courts have dealt with prove-up affidavits that come in varied forms, many of which do not properly address the foundational requirements necessary for establishing the accuracy of computerized business records nor the correct amount due and owing under the mortgage and note. Paragraph (c)(2) identifies the minimum requirements necessary for a prove-up affidavit submitted by the mortgagee for entry of a judgment of foreclosure and Form 1 gives a form affidavit that should be used.

No judgment of foreclosure will be entered without compliance with Paragraph (c). However, Form 1 establishes only the amounts due and owing on the borrower's loan. Paragraph (c)(2) and Form 1 do not relieve the foreclosing party from establishing other evidentiary requirements, as necessary, in connection with proving the allegations contained in its complaint including, but not limited to, the party's right to enforce the instrument of indebtedness, if applicable.

Paragraph (d) addresses the desire of the Illinois courts to have adequate assurance that the mortgagor is sufficiently notified when an order of default and a judgment of foreclosure are entered against the mortgagor. Many mortgagors ignore court notices, believing that they are in error because their lender is negotiating with them for a loan modification. Other mortgagors have been told by servicers that their foreclosure case is on hold, but the servicer has not told the plaintiff's attorneys to place the file on hold. Currently, many circuit court clerks send a generic postcard that notifies any defendant, who has an appearance on file, of entry of a default order. Thus, if the mortgagor has not filed an appearance, the mortgagor may not receive notice of the default order from the clerk. The post card may not contain any helpful information that the defendant can understand. Likewise, notice of the default order is not mailed to the property address as a matter of course. While section 2-1302 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1302) requires that a plaintiff give notice of entry of a default order to be sent to all

parties against whom the order applies, failure to give such notice does not affect the validity of the order. As a result, a mortgagor may not receive notice of entry of the default order from either the Clerk of the Circuit Court or the mortgagee's counsel.

Paragraph (d) addresses this deficiency in the notification process and requires the mortgagee's counsel to prepare a specific "Notice of Entry of Default and Judgment of Foreclosure" (Form 2). Counsel for the plaintiff must prepare this notice for the property address or any other address where the defendant is most likely to receive it. A defendant may have filed an appearance or another court paper that would indicate an address that may be different from the address of service of summons and different from the property address. By preparing this notice, and having the Clerk of the Circuit Court mail the notices, any undeliverable mail will remain in the court file and defaulted mortgagors will receive a clearer notice of the order and the judgment of foreclosure than they do currently.

Paragraph (f) addresses two issues relating to judicial sales that have become substantial problems throughout the state. Paragraph (f)(1) attempts to provide adequate notice to those mortgagors who are about to lose their home. Currently, the Illinois Mortgage Foreclosure Law does not specify that a separate notice of the sale be sent to defaulted defendants, and assumes that the publication requirements are adequate for those that have not otherwise participated in the foreclosure proceedings. See 735 ILCS 5/15-1507(c)(3) (lacking a specific requirement that a separate notice of sale be sent to a defaulted mortgagor). However, in many residential cases, a lack of participation, for any reason, results in a lack of notice of the sale to the mortgagor living in the property being foreclosed. That lack of notice often results in the mortgagor learning about the sale on the eve of the sale and filing an emergency motion to stay the sale. In cases where the mortgagor finds out about the sale from a notice of confirmation of sale or through the sheriff's notice of eviction, the courts then must hear motions to vacate the sale and motions to stay possession. See 735 ILCS 5/15-1508(b-5) (requiring notice of confirmation of sale be sent to a defaulted mortgagor). Many of these motions could be avoided and judicial efficiency increased if all parties, including defaulted parties, are given notice of the sale. Accordingly, paragraph (f)(1) implements a new notice requirement to supplement section 15-1507(c)(3) by mandating a separate notice to a defaulted mortgagor presale while also complementing section 15-1508(b-5) that requires notice postsale for confirmation.

Paragraph (f)(2) addresses the selling officer. Currently, section 15-1506(f)(3) of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1506(f)(3)) allows, by special motion, an official other than the one customarily designated by a court to be appointed to conduct judicial sales. The Committee recognized that the customarily appointed selling officer is the sheriff in many counties statewide, section 15-1506 allows a court to appoint a private selling officer upon motion. Given the high volume of foreclosures throughout the state, many sales are being held nearly a year after the expiration of the redemption period. In some cases, this is due to the failure of the sheriff to promptly obey the court order commanding him to sell the property at auction. Accordingly, the loan accrues late fees and increased interest charges. These additional charges do not benefit any party to the foreclosure and do not help the communities if the property remains vacant during that idle period. In order to correct these deficiencies in the process, the Committee recommended that a rule be enacted that expressly allows the use of private selling officers throughout the state. In many instances, private selling officers have lower costs with the capacity and ability to conduct a sale in a timely manner that prevents the

accrual of additional fees and facilitates the rehabilitation of properties into valuable components of neighborhoods.

Paragraph (g) implements a specific notification process for informing mortgagors about the existence of surplus funds resulting from a judicial sale. Currently, many clerks of the circuit courts are holding unclaimed surplus funds from judicial sales. Due to the lack of notice, these funds remain unclaimed. Paragraph (g) implements a specific "Special Notice of Surplus Funds" (Form 3) that the plaintiff's counsel must send to the mortgagors and paragraph (h) includes a specific motion (Form 4) that can be completed by the mortgagors for presentment to the court without an attorney. This paragraph is intended to facilitate the ability of mortgagors to claim those funds to which they may be entitled.

Paragraph (i) addresses the issue of a deceased mortgagor and the subject matter jurisdiction issues addressed in *ABN Amro Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526 (2010), which have not been specifically addressed by remedial legislation.

Corrected Rule 138

Rule 138. Personal Identity Information

(a) Applicability.

(1) In civil cases, personal identity information shall not be included in documents or exhibits filed with the court except as provided in paragraph (c).

(2) This rule does not apply to cases filed confidentially and not available for public inspection.

(b) Personal identity information, for purposes of this rule, is defined as follows:

(1) Social Security and individual taxpayer-identification numbers;

(2) driver's license numbers;

(3) financial account numbers; and

(4) debit and credit card numbers.

A court may order other types of information redacted or filed confidentially, consistent with the purpose and procedures of this rule.

(c) A redacted filing of personal identity information for the public record is permissible and shall only include:

(1) the last four digits of the Social Security or individual taxpayer-identification number;

(2) the last four digits of the driver's license number;

(3) the last four digits of the financial account number; and

(4) the last four digits of the debit and credit card number.

When the filing of personal identity information is required by law, ordered by the court, or otherwise necessary to effect disposition of a matter, the party shall file a "Notice of Confidential Information Within Court Filing," prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix. This document shall contain the personal identity information in issue and shall be impounded by the clerk immediately upon filing. Thereafter, the document and any attachments thereto shall remain impounded and be

maintained as confidential, except as provided in paragraph (d) or as the court may order.

After the initial impounded filing of the personal identity information, subsequent documents filed in the case shall include only redacted personal identity information with appropriate reference to the impounded document containing the personal identity information.

If any of the impounded personal identity information in the initial filing subsequently requires amendment or updating, the responsible party shall file the amended or additional information by filing a separate "Notice of ~~Of~~ Confidential Information Within Court Filing" form.

(d) The information provided with the "Notice of Confidential Information Within Court Filing" shall be available to the parties, to the court, and to the clerk in performance of any requirement provided by law, including the transfer of such information to appropriate justice partners, such as the sheriff, guardian *ad litem*, and the State Disbursement Unit (SDU), the Secretary of State or other governmental agencies, and legal aid agencies or bar association *pro bono* groups. In addition, the clerk, the parties, and the parties' attorneys may prepare and provide copies of documents without redaction to financial institutions and other entities or persons which require such documents.

(e) Neither the court nor the clerk is required to review documents or exhibits for compliance with this rule. If the clerk becomes aware of any noncompliance, the clerk may call it to the court's attention. The court, however, shall not require the clerk to review documents or exhibits for compliance with this rule.

(f)(1) If a document or exhibit is filed containing personal identity information, a party or any other person whose information has been filed may move that the court order redaction and confidential filing as provided in paragraph (b). The motion shall be impounded, and the clerk shall remove the document or exhibit containing the personal identity information from public access pending the court's ruling on the substance of the motion. A motion requesting redaction of a document in the court file shall have attached a copy of the redacted version of the document. If the court allows the motion, the clerk shall retain the unredacted copy under impoundment and the redacted copy shall become part of the court record.

(2) If the court finds the inclusion of personal identity information in violation of this rule was willful, the court may award the prevailing party reasonable expenses, including attorney fees and court costs.

(g) This rule does not require any clerk or judicial officer to redact personal identity information from the court record except as provided in this rule.

Adopted Oct. 24, 2012, eff. July 1, 2013; amended June 3, 2013, eff. July 1, 2013; amended June 27, 2013, eff. July 1, 2013; amended Dec. 24, 2013, eff. Jan. 1, 2014; amended May 29, 2014, eff. immediately; amended Nov. 21, 2014, eff. immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

October 24, 2012

(Revised June 3, 2013)

(Revised December 24, 2013)

(Revised May 29, 2014)

Paragraph (a)

Supreme Court Rule 138, adopted October 24, 2012, prohibits the filing of personal identity information that could be used for identity theft. For instance, financial disclosure statements used in family law cases typically contain a variety of personal information that shall remain confidential to protect privacy concerns.

Paragraph (b)

While paragraph (b) defines the most common types of personal identity information, it further allows the court to order redaction or confidential filing of other types of information as necessary to prevent identity theft.

Paragraph (c)

The procedures in paragraph (c) address the filing of personal identity information in redacted form for the public record. Where the personal identity information is required by law, ordered by the court, or otherwise necessary to effect a disposition of a matter, the litigant shall file the document in redacted form and separately file the subject personal identity information in a protected document titled a "Notice of Confidential Information Within Court Filing," using the appended form. The filing of a separate document without redaction is not necessary or required because the personal identity information will be available to authorized persons by referring to the "Notice of Confidential Information Within Court Filing" form.

Paragraph (d)

The clerk of court can utilize personal identity information and share that information with other agencies, entities and individuals, as provided by law.

Corrected Rule 208

Rule 208. Fees and Charges; Copies

(a) Who Shall Pay. Except as provided in paragraph (e), the party at whose instance the deposition is taken shall pay the fees of the witness and of the officer and the charges of the recorder or stenographer for attending. The party at whose request a deposition is transcribed shall pay the charges for transcription. If, however, the scope of the examination by any other party exceeds the scope of examination by the party at whose instance the deposition is taken, the fees and charges due to the excess shall be summarily taxed by the court and paid by the other party.

(b) Amount. The officer taking and certifying a deposition is entitled to any fees provided by statute, together with the reasonable and necessary charges for a recorder or stenographer for attending and transcribing the deposition. Every witness attending before the officer is entitled to

the fees and mileage allowance provided by statute for witnesses attending courts in this State.

(c) Copies. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition transcript to any party or to the deponent.

(d) Taxing as Costs. The fees and charges provided for in paragraphs (a) through (c) may, in the discretion of the trial court, be taxed as costs.

(e) Controlled Expert Witness Fees. Each party shall, unless manifest injustice would result, bear the expense of all fees charged by his or her Rule 213(f)(3) controlled expert witness or witnesses.

Amended Dec. 29, 2017, eff. Jan. 1, 2018.

Corrected Rule 215

Rule 215. Physical and Mental Examination of Parties and Other Persons.

(a) Notice; Motion; Order. In any action in which the physical or mental condition of a party or of a person in the party's custody or legal control is in controversy, the court, upon notice and on motion made within a reasonable time before the trial, may order such party to submit to a physical or mental examination by a licensed professional in a discipline related to the physical or mental condition which is involved. The motion shall suggest the identity of the examiner and set forth the examiner's specialty or discipline. The court may refuse to order examination by the examiner suggested but in that event shall permit the party seeking the examination to suggest others. A party or person shall not be required to travel an unreasonable distance for the examination. The order shall fix the time, place, conditions, and scope of the examination and designate the examiner. The party calling an examiner to testify at trial shall disclose the examiner as a controlled expert witness in accordance with these rules.

(b) Examiner's Fee and Compensation for Loss of Earnings. The party requesting the examination shall pay the fee of the examiner and compensation for any loss of earnings incurred or to be incurred by the party or person to be examined in complying with the order for examination, and shall advance all reasonable expenses incurred or to be incurred by the party or person in complying with the order.

(c) Examiner's Report. Within 21 days after the completion of the examination, the examiner shall prepare and deliver to the attorneys for the party requesting the examination and the party examined a written report of the examination, setting out the examiner's findings, results of all tests made, and the examiner's diagnosis and conclusions. The court may enforce compliance with this requirement. If the report is not delivered to the attorney for the party examined within the time herein specified or within any extensions or modifications thereof granted by the court, neither the examiner's report, the examiner's testimony, the examiner's findings, X-ray films, nor the results of any tests the examiner has made may be received in evidence except at the instance of the party examined or who produced the person examined. No examiner under this rule shall be considered a consultant.

(d) Impartial Medical Examiner.

(1) *Examination Before Trial.* A reasonable time in advance of the trial, the court may on

its own motion or that of any party, order an impartial physical or mental examination of a party where conflicting medical testimony, reports or other documentation has been offered as proof and the party's mental or physical condition is thereby placed_in issue, when in the court's discretion it appears that such an examination will materially aid in the just determination of the case. The examination shall be made by a member or members of a panel of physicians chosen for their special qualifications by the Administrative Office of the Illinois Courts.

(2) *Examination During Trial.* Should the court at any time during the trial find that compelling considerations make it advisable to have an examination and report at that time, the court may in its discretion so order.

(3) *Copies of Report.* A copy of the report of examination shall be given to the court and to the attorneys for the parties.

(4) *Testimony of Examining Physician.* Either party or the court may call the examining physician or physicians to testify. Any physician so called shall be subject to cross-examination.

(5) *Costs and Compensation of Physician.* The examination shall be made, and the physician or physicians, if called, shall testify without cost to the parties. The court shall determine the compensation of the physician or physicians.

(6) *Administration of Rule.* The Administrative Director and the Deputy Administrative Director are charged with the administration of the rule.

Amended June 1, 1995, effective January 1, 1996; amended March 28, 2002, effective July 1, 2002; amended March 28, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

(March 28, 2011)

Paragraph (d) provides that a trial court may order impartial medical examinations only where the parties have presented conflicting medical testimony, reports or other such documentation which places a party's mental or physical condition "in issue" and, in the court's discretion, it appears that the examination will materially aid in the just determination of the case. Mere allegations are insufficient to place a party's mental or physical condition "in issue."

The impartial medical examiner cannot answer the ultimate legal issues in the case; rather, the examiner can render a medical opinion which can assist in the resolution of those issues.

SEE ADMINISTRATIVE ORDER ENTERED NOVEMBER 27, 2002

Committee Comment

(March 28, 2002)

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

Committee Comments

(Revised June 1, 1995)

This rule is derived from former Rules 17-1 and 17-2. The language of Rule 17-1 was not changed except that the time in which the examining physician shall present his findings has been extended to 21 days in paragraph (c) of Rule 215. Under former Rule 17-1(3) that period was 20 days. Paragraph (c) of the new rule also requires that the physician present his report 14 days before trial. Former Rule 17-1(3) required the physician to present his findings not later than 10 days before trial. These changes are consistent with the committee's general policy of establishing time periods in multiples of seven days.

Former Rule 17-2 has been revised as paragraph (d) of the new rule, but the substance is not changed, except that the provision is no longer limited to personal injury cases.

This rule is intended to provide an orderly procedure for the examination of civil litigants whose physical or mental condition is in controversy. Originally, the rule concerned only physicians. The new rule recognizes that a number of professionals in other health-related disciplines are licensed to perform physical and mental examinations and therefore the designation "licensed professional" is substituted for "physician." The new language was adopted to effectuate the objectives of the rule with minimal judicial involvement. The requirement of "good cause" was therefore eliminated as grounds for seeking an examination.

Timing is the critical consideration. Examining professionals under the rule fall within the classification of opinion witnesses under Supreme Court Rule 213(g) as opposed to consultants under Supreme Court Rule 201(b)(3). Consequently, the rule has been amended to require that the examination be scheduled in order that the report contemplated by subsection (c) is provided in accordance with the deadlines imposed by Supreme Court Rule 218(c). In addition, the failure to provide the attorney for the party who was examined with a copy of the examiner's report within the 21-day period specified by paragraph (c) will result in exclusion of the examiner's testimony, opinions, and the results of any tests or X-rays that were performed.

Supreme Court Rule 215 is the compilation of rules previously and independently suggested by the Illinois Judicial Conference Committee on Discovery Procedures and the Supreme Court Rules Committee. The new rule allows for physical and mental examinations of "licensed professionals" and not merely physicians. The contemplated circumstances include sociologists, psychologists or other licensed professionals in juvenile, domestic relations and child custody cases. The Committee feels that this will aid not only in the previously designated cases but in other circumstances where it may become necessary for such a "professional" to be utilized. In particular, smaller counties have had difficulty in finding psychiatrists because of their limited number and lack of availability. This rule should help to alleviate this problem. The requirement of "good cause" for seeking such an examination was eliminated from the rule. In addition, the reference to the Illinois State Medical Society has been stricken, and the Administrative Office of the Illinois Courts has been substituted in its place.

Corrected Rule 272

Rule 272. When Judgment is Entered

If at the time of announcing final judgment the judge requires the submission of a form of written judgment to be signed by the judge or if a circuit court rule requires the prevailing party

promptly, and the judgment is entered at the time it is entered of record. Orders and judgments may be prepared, presented, and signed electronically, if permitted by the Supreme Court.

Amended October 25, 1990, effective November 1, 1990; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

The purpose of this rule is to remove any doubt as to the date a judgment is entered. It applies to both law and equity, and the distinction stated in *Freeport Motor Casualty Co. v. Tharp*, 406 Ill. 295, 94 N.E.2d 139 (1950), as to the effective dates of a judgment at law and a decree in equity is abolished. In 1990 the rule was amended to provide that in those cases in which, by circuit court rule, the prevailing party is required to submit a draft order, a judgment becomes final only after the signed judgment is filed. The 1990 amendment was intended to negate the ruling in *Davis v. Carbondale Elementary School District No. 95* (1988), 170 Ill. App. 3d 687, 525 N.E.2d 135.

Corrected Rule 292

Rule 292. Form of Summons in Proceedings to Review Orders of the Illinois Workers' Compensation Commission

Upon the filing of a written request to commence a proceeding to review an order of the Illinois Workers' Compensation Commission under either the Workers' Compensation Act, approved July 9, 1951, as amended, or the Workers' Occupational Diseases Act, approved July 9, 1951, as amended, the clerk of the circuit court shall issue a summons to the Commission and all other parties in interest by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

Adopted April 27, 1984, effective July 1, 1984; amended October 9, 1984, effective November 1, 1984; amended October 15, 2004, effective January 1, 2005; amended Dec. 29, 2017, eff. Jan. 1, 2018.

Committee Comments

Rule 292 was adopted in 1984 in order to insure uniform adherence to the requirements of Public Act 83-360 and Public Act 83-361, which make summons, rather than writ of *certiorari*, the proper device for the commencement of review of Industrial Commission orders. The proceedings must be commenced within 20 days of the receipt of notice of the decision of the Commission. The summons shall be issued by the clerk of the circuit court upon written request, returnable on a designated return day, not less than 10 nor more than 60 days from the date of issuance of the summons.