

**ANNUAL REPORT OF THE  
COMMITTEE ON DISCOVERY PROCEDURES  
TO THE ILLINOIS JUDICIAL CONFERENCE**

Honorable Frederick J. Kapala, Chairperson (7-19-04 to 12-31-04)  
Honorable Joseph N. Casciato, Chairperson (1-1-04 to 7-16-04)

Hon. Melissa A. Chapman  
Hon. Deborah Mary Dooling  
Hon. James R. Glenn  
Hon. Tom M. Lytton  
Hon. Mary Anne Mason

Hon. James J. Mesich  
David B. Mueller  
Donald J. Parker  
Eugene I. Pavalon  
Paul E. Root

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**I. STATEMENT ON COMMITTEE CONTINUATION**

The goals of the Committee on Discovery Procedures (“Committee”) include streamlining discovery procedures, increasing compliance with existing rules, and eliminating loopholes and potential delay tactics. To accomplish these goals, the Committee continues to research significant discovery issues and respond to discovery-related inquiries. Because the Committee continues to provide valuable expertise in the area of civil discovery, the Committee respectfully requests that it be continued.

**II. SUMMARY OF COMMITTEE ACTIVITIES**

During the Conference year, the Committee considered proposed amendments to Supreme Court Rules 204, 206, 222 and 237. The Committee also considered the creation of a uniform court order for disclosing medical records under “HIPAA.” As a final matter, the Committee addressed whether to eliminate the distinction between discovery and evidence depositions.

**A. Supreme Court Rules Committee’s Proposal to Amend Supreme Court Rule 204(d)**

This proposal would amend Rule 204 by creating a paragraph to address deposition fees for an independent expert witness. The Supreme Court Rules Committee forwarded this proposal to the Committee for its review and recommendation. The Committee raised questions about the definition of fee and independent expert and the rationale behind the proposed change. The Committee expressed concern about increasing the cost of litigation by encouraging charging a fee for testimony as opposed to appearing via subpoena. The Committee conveyed its questions/concerns to the Supreme Court Rules Committee. After considering the questions/concerns raised by the Committee, the Supreme Court Rules Committee decided to discontinue further discussion of the proposed amendment.

**B. Committee’s Proposal to Amend Supreme Court Rule 206(c)**

This proposal would amend Rule 206(c), which concerns the method of taking depositions on oral examination, by eliminating objections, except as to privilege, in discovery depositions, and by requiring that objections in evidence depositions be concise and state the exact legal basis for the objection. The Committee again reconsidered this proposal because some members noted the increased occurrence of attorneys attempting to testify for a witness as opposed to raising legitimate objections. Other members of the Committee expressed concern over eliminating objections, which are a means of protecting a witness from abusive conduct by the deposing attorney. The argument was presented that, if an attorney is precluded from objecting, there would be no means of preventing admissions from being read into evidence. The Committee again decided to table this proposed amendment for future discussion given that the mechanism is in place to terminate a deposition and go to court.

### **C. Alternative Dispute Resolution Coordinating Committee's Proposal to Amend Supreme Court Rule 222(c)**

The proposed amendment requires practitioners to follow the dictates of timeliness set by local rule in making initial disclosures under Rule 222. The Alternative Dispute Resolution Coordinating Committee forwarded this proposal to the Committee for its review and recommendation. The Committee agreed with the logic of the proposed amendment. The Committee therefore recommended adoption of the proposed amendment and forwarded its recommendation to the Supreme Court Rules Committee.

### **D. Supreme Court Rules Committee's Proposal to Amend Supreme Court Rule 237(c)**

This proposal would amend Rule 237 by adding a paragraph requiring the appearance of certain individuals and the production of certain documents at expedited hearings. The Supreme Court Rules Committee forwarded this proposal to the Committee for its review and recommendation. The Committee expressed concern about compelling an officer, director or employee of a party to appear for an expedited hearing with very little notice. The Committee also expressed concern about allowing expedited hearings beyond the context of domestic relations cases. The Committee forwarded its concerns to the Rules Committee, which agreed with the Committee's limitation of the amendment to domestic relations cases and to the elimination of the phrase "or a person who at the time of the hearing is an officer, director, or employee of a party." The Committee therefore recommended adoption of the modified proposal to amend Rule 237 and so informed the Rules Committee.

### **E. Disclosure of Medical Records under "HIPAA" - Creation of Uniform Court Order**

The Committee discussed creating a uniform court order for purposes of disclosing medical records under "HIPAA," the Health Insurance Portability and Accountability Act. Some members of the Committee indicated that they had not witnessed contested motions regarding the current use of various HIPAA orders. Moreover, some members questioned whether the Committee could recommend a uniform order or rule given that HIPAA involves federal legislation. The Committee therefore tabled its discussion on creating a uniform order in this context until it is informed of a problem with the current orders being used.

### **F. Discovery and Evidence Depositions**

The Committee discussed the ISBA article entitled "Its Time to Move Beyond Separate Discovery and Evidence Depositions in Illinois." Some members indicated their preference for the current distinction between such depositions. It was pointed out that discovery depositions are a useful tool for obtaining information and in expediting the process. The Committee concluded that, until it is asked to address this matter, further discussion will be tabled.

**III. PROPOSED COMMITTEE ACTIVITIES FOR THE NEXT CONFERENCE YEAR**

During the 2005 Conference Year, the Committee will review any proposals submitted by the Supreme Court Rules Committee.

**IV. RECOMMENDATIONS**

The Committee is making no recommendations to the Conference at this time.