

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

Hon. Frederick J. Kapala, Chair

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I. STATEMENT ON COMMITTEE CONTINUATION

The purpose of the Committee on Discovery Procedures (“Committee”) is to review and assess discovery devices used in Illinois, with the goal of making recommendations to expedite discovery and to eliminate any abuses of the discovery process. To accomplish this purpose, 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 requests that it be permitted to continue its work in Conference Year 2007.

II. SUMMARY OF COMMITTEE ACTIVITIES

A. Committee Charge

The Committee is charged with studying and making recommendations on the discovery devices used in Illinois including, but not limited to, depositions, interrogatories, requests for production of documents or tangible things or inspection of real property, disclosures of expert witnesses, and requests for admission. The Committee also is charged with investigating and making recommendations on innovative means of expediting pretrial discovery and ending any abuses of the discovery process so as to promote early settlement discussions and to encourage civility among attorneys. Finally, it is part of the Committee’s charge to review and make recommendations on proposals concerning discovery matters submitted by the Supreme Court Rules Committee, other committees, or other sources.

In Conference Year 2006, the Committee addressed the problems associated with sorting through various and often voluminous documents submitted pursuant to a written request to produce under Supreme Court Rule 214. After some discussion, the Committee sought to clarify Rule 214 by requiring that documents, produced pursuant to a Rule 214 request, are labeled to correspond with the specific categories in the written request. It is the intent of the Committee that such labeling of documents will allow the requesting party to be able to reasonably identify to which specific category in the request each produced document is responsive. The Committee, consistent with Supreme Court Rule 3, forwarded its proposed amendments to the Supreme Court Rules Committee.

B. 2006 Projects and Priorities

The following subjects represent the projects/priorities assigned by the Supreme Court to the Committee for consideration in Conference Year 2006.

1. Request to Admit

The Committee was asked to identify and analyze the abuses surrounding the strict requirements for responding to a Supreme Court Rule 216 Request to Admit, with the goal of

identifying a means to eliminate such abuses. It has been noted by practitioners on the Committee that requests to admit are often buried with numerous other discovery requests, where they are more likely to go undetected by the responding party until after the deadline has passed. Consequently, they are often used as a tactic to ambush the other side. The purpose of Rule 216 is to eliminate disputes on matters readily admitted by the parties so as to simplify the issues. It would therefore be useful to the discovery process for the Committee to explore a means of eliminating any abuse of Rule 216, including the possibility of requiring leave of court before filing a request to admit.

In analyzing the abuses surrounding a Rule 216 Request to Admit, the Committee found that such abuses often occur in small cases in high volume courtrooms, such as municipal court, where many of the law firms are “bulk filers,” who represent credit card companies and collection agencies, and many of the litigants are *pro se*. It is in such courtrooms that the strict requirements of the rule are being misused. In exploring a means of eliminating misuse of Rule 216, the Committee recognized the potential burden on the court if leave of court is required before filing any request to admit. Moreover, the Committee noted the unfair advantage that would be created if *pro se* litigants were exempt from complying with the rule. After much discussion, the Committee proposed certain narrow amendments to Rule 216, including requiring prior leave of court before serving a request to admit; proper notice to all parties; and prohibiting such requests from being served more than 120 days after the filing of a responsive pleading unless there is agreement otherwise or the court so orders. Nevertheless, the Committee limited application of its proposed amendments to civil actions not in excess of \$50,000.

In limiting the scope of its proposed amendments, the Committee sought to curb the misuse of Rule 216 requests and yet retain the original purpose of the rule to clarify and simplify evidentiary issues at trial. The Committee therefore rejected a proposal submitted by the Illinois State Bar Association that set a time frame for responding to all requests to admit, and provided for admission in the absence of denial and upon approval by the court. Consistent with Supreme Court Rule 3, the Committee forwarded its proposed amendments to the Supreme Court Rules Committee.

2. Mandatory Disclosure

The Committee was asked to explore the feasibility and nuances of a rule requiring mandatory disclosure of relevant documents. Members of the Committee have noted the increasing problem of parties not receiving relevant information before trial. In response, it has been suggested that a rule be created to require mandatory disclosure of relevant documents similar to the disclosure requirements set forth in Rule 222. Such a rule might prove beneficial in fostering early settlement discussions among parties.

Initially, the Committee considered requiring mandatory disclosure of documents relied on by the plaintiff in formulating a complaint and of documents relied on by the defendant in formulating an answer and affirmative defense. There was concern, however, that such a requirement would encroach into work product and the thought process in developing a client's case to require disclosure of documents relied on in drafting pleadings.

The Committee also considered adopting mandatory disclosure similar to Federal Rule of Civil Procedure 26, which requires the automatic disclosure of certain information and documents within a specific period after a claim is filed. The Committee discussed Federal Rule 26's apparent conflict with Supreme Court Rule 222, which has its own mandatory disclosure requirements for civil actions seeking money damages not in excess of \$50,000. The Committee also discussed the difference in philosophy between the federal and Illinois rules on discovery. The federal rules focus on whether discovery is relevant to the parties' claim or defense whereas the Illinois discovery rules focus on the relevancy of discovery to the subject matter. The Committee therefore decided not to adopt the automatic disclosure of documents set forth in the federal rules.

Instead, the Committee is considering a form of minimum disclosure whereby certain aspects of Rule 222 are made applicable to general discovery. To assist its discussion, the Committee has begun to examine discovery rules concerning disclosure in other states, along with gathering information about the use of case management conferences and related orders.

III. PROPOSED COMMITTEE ACTIVITIES FOR THE NEXT CONFERENCE YEAR

During the 2007 Conference year, the Committee requests that it be permitted to continue its review of mandatory disclosure. The Committee further requests that it be permitted to review and assess other discovery devices, specifically those related to depositions, work product and interrogatories. Finally, 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.