

M.R. 3140

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

Order entered December 8, 2010.

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

Effective January 1, 2011, Supreme Court Rules 212 and 714 are amended as follows.

Amended Rule 212

Rule 212. Use of Depositions

(a) Purposes for Which Discovery Depositions May Be Used.

Discovery depositions taken under the provisions of this rule may be used only:

(1) for the purpose of impeaching the testimony of the deponent as a witness in the same manner and to the same extent as any inconsistent statement made by a witness;

(2) as an admission made by a party or by an officer or agent of a party in the same manner and to the same extent as any other admission made by that person;

(3) if otherwise admissible as an exception to the hearsay rule;

(4) for any purpose for which an affidavit may be used; or

(5) upon reasonable notice to all parties, as evidence at trial or hearing against a party who appeared at the deposition or was given proper notice thereof, if the court finds that the deponent is ~~neither~~ not a controlled expert witness ~~nor a party~~, the deponent's evidence deposition has not been taken, and the deponent is unable to attend or testify because of death or infirmity, and if the court, based on its sound discretion, further finds such evidence at trial or hearing will do substantial justice between or among the parties.

(b) Use of Evidence Depositions. The evidence deposition of a

physician or surgeon may be introduced in evidence at trial on the motion of either party regardless of the availability of the deponent, without prejudice to the right of either party to subpoena or otherwise call the physician or surgeon for attendance at trial. All or any part of other evidence depositions may be used for any purpose for which a discovery deposition may be used, and may be used by any party for any purpose if the court finds that at the time of the trial:

(1) the deponent is dead or unable to attend or testify because of age, sickness, infirmity or imprisonment;

(2) the deponent is out of the county, unless it appears that the absence was procured by the party offering the deposition, provided, that a party who is not a resident of this State may introduce his own deposition if he is absent from the county; or

(3) the party offering the deposition has exercised reasonable diligence but has been unable to procure the attendance of the deponent by subpoena; or finds, upon notice and motion in advance of trial, that exceptional circumstances exist which make it desirable, in the interest of justice and with due regard for the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(c) Partial Use. If only a part of a deposition is read or used at the trial by a party, any other party may at that time read or use or require him to read any other part of the deposition which ought in fairness to be considered in connection with the part read or used.

(d) Use After Substitution, Dismissal, or Remandment. Substitution of parties does not affect the right to use depositions previously taken. If any action in any court of this or any other jurisdiction of the United States is dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, or if any action is remanded by a court of the United States to a court of this State, all depositions lawfully taken and duly filed in the former action, or before remandment, may be used as if taken in the later action, or after remandment.

Amended February 19, 1982, effective April 1, 1982; amended May 28, 1982, effective July 1, 1982; amended March 1, 2001, effective immediately; amended March 28, 2002, effective July 1, 2002; amended December 8, 2010, effective January 1, 2011.

Committee Comments

(January 1, 2011)

Paragraph (a)

The Committee was prompted to examine this issue by the decision in *Berry v. American Standard, Inc.*, 382 Ill. App. 3d 895 (5th Dist. 2008). The Committee believes that a trial court should have the discretion under subparagraph (a)(5) to permit the use of a party's discovery deposition at trial. It appears that there may be rare, but compelling, circumstances under which a party's discovery deposition should be permitted to be used. In the Committee's view, *Berry* presents such circumstances. Given that in most cases counsel will have the opportunity to preserve a party's testimony via an evidence deposition, it is expected that the circumstances that would justify use of a discovery deposition would be extremely limited.

This amendment applies to cases filed on or after the effective date.

Amended Rule 714

Rule 714. Capital Litigation Trial Bar

(a) Statement of Purpose. This rule is promulgated to insure that counsel who participate in capital cases possess the ability, knowledge and experience to do so in a competent and professional manner. To this end, the Supreme Court shall certify duly licensed attorneys to serve as members of the Capital Litigation Trial Bar.

(b) Qualifications of Members of the Capital Litigation Trial Bar. Unless exempt under paragraph (c), or the Supreme Court determines that an attorney otherwise has the competence and ability to participate in a capital case pursuant to paragraph (d), trial counsel must meet the following minimum requirements:

Lead Counsel—Qualifications

(1) Be a member in good standing of the Illinois Bar or be admitted to the practice *pro hac vice*;

(2) Be an experienced and active trial practitioner with at least five years of criminal litigation experience within the last seven years;

(3) Have substantial familiarity with the ethics, practice, procedure and rules of the trial and reviewing courts of the State of Illinois; and

(4) Have prior experience as lead or co-counsel in no fewer than eight felony jury trials which were tried to completion, at least two of which were murder prosecutions and at least two trials must have been tried within the last seven years; and either

(i) have completed at least 12 hours of training in the preparation and trial of capital cases in a course approved by the Illinois Supreme Court, within two years prior to making application for admission; or

(ii) have substantial familiarity with and extensive experience in the use of expert witnesses, and forensic and medical evidence including, but not limited to, mental health, pathology and DNA profiling evidence.

Co-Counsel–Qualifications

(1) Be a member in good standing of the Illinois Bar or be admitted to the practice *pro hac vice*; -

(2) Be an experienced and active trial practitioner with at least three years of criminal litigation experience within the last seven years; -

(3) Have substantial familiarity with the ethics, practice, procedure and rules of the trial and reviewing courts of the State of Illinois; and -

(4) Have prior experience as lead or co-counsel in no fewer than five felony jury trials which were tried to completion and at least one trial must have been tried within the last seven years; and either

(i) have completed at least 12 hours of training in the preparation and trial of capital cases in a course approved by the Illinois Supreme Court, within two years prior to making application for admission; or

(ii) have substantial familiarity with and extensive experience in the use of expert witnesses, and forensic and medical evidence including, but not limited to, mental health, pathology and DNA profiling evidence.

(c) The Attorney General or duly elected or appointed State’s Attorney of each county of this state shall not be disqualified from prosecuting a capital case because he or she is not a member of the Capital Litigation Trial Bar.

(d) Waiver. If an attorney cannot meet one or more of the requirements set forth above, the Supreme Court may waive such requirement upon demonstration by the attorney that he or she, by reason of extensive criminal or civil litigation, appellate or postconviction experience or other exceptional qualifications, is

capable of providing effective representation as lead or co-counsel in capital cases.

(e) Application for Admission to the Capital Litigation Trial Bar. In support of an application, an attorney shall submit to the Illinois Supreme Court a form approved by the Administrative Office of the Illinois Courts. It shall require the attorney to demonstrate that he or she has fully satisfied the requirements set forth above. The attorney shall also identify any requirement that he or she requests be waived and shall set forth in detail such criminal or civil litigation, appellate or postconviction experience or other exceptional qualifications that justify waiver. Applications for certification as lead counsel by attorneys previously certified as co-counsel shall be handled in the same manner as original applications for admission to the Capital Litigation Trial Bar.

(f) Creation of Capital Litigation Trial Bar Roster. The Administrative Office of the Illinois Courts shall review each application to determine that it is complete. All completed applications shall be delivered, within 30 days of their receipt, to the screening panel designated by the Supreme Court to consider such applications. Within 30 days of receipt of the application the screening panel shall designate those attorneys deemed qualified to represent parties in capital cases and shall report those findings to the Supreme Court. Upon concurrence by the Supreme Court, the court shall direct the Administrative Office to maintain and promulgate a roster of attorneys designated as members of the Capital Litigation Trial Bar. The roster shall indicate whether the attorney is certified as lead counsel or co-counsel.

(g) Continuing Legal Education. In addition to fulfilling the requirements for Capital Litigation Trial Bar membership, each member of the Capital Litigation Trial Bar shall complete at least 12 hours of training in the preparation and trial of capital cases in a course approved by the Illinois Supreme Court within each two-year period following admission to that bar. It shall be the responsibility of each Capital Litigation Trial Bar member to provide notice of completion within 60 days of such training to the Administrative Office of the Illinois Courts, either by individual correspondence or by certification provided by the agency or group conducting such training.

(h) Removal of Eligibility. The Supreme Court may remove from the roster of the Capital Litigation Trial Bar any attorney who, in the court's judgment, has not provided ethical, competent, and thorough representation. In addition, the court may suspend or remove from the Capital Litigation Trial Bar roster any attorney who has failed to meet the continuing legal education requirements of paragraph (g).

(i) Reinstatement. An attorney who has been suspended or removed from the roster of the Capital Litigation Trial Bar for failure to comply with the continuing legal education requirements of paragraph (g) may be reinstated by the Supreme Court. An attorney who seeks reinstatement must, within one year after receiving notice of being removed or suspended from the roster of the Capital Litigation Trial Bar, complete the 12 hours of training as required by paragraph (g) and provide notice of compliance to the Administrative Office of the Illinois Courts. Such notice shall be in a form and manner approved by the Administrative Office of the Illinois Courts. To be reinstated, an attorney must have remained in compliance with all other qualifications for membership in the Capital Litigation Trial Bar. An attorney may seek reinstatement by this process only once.

Adopted March 1, 2001, effective immediately; amended October 1, 2004, effective January 1, 2005; amended April 4, 2007, effective immediately; amended December 8, 2010, effective January 1, 2011.