Formerly cited as IL ST CH 110A ¶ 201

Docket 12-0324
ComEd Late-Filed Ex. 6.
(9 pages)

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West's Smith-Hurd Illinois Compiled Statutes Annotated Currentness
Court Rules
Illinois Supreme Court Rules (Refs & Annos)
Article II. Rules on Civil Proceedings in the Trial Court
Part E. Discovery, Requests for Admission, and Pretrial Procedure (Refs & Annos)
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.

(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.

(c) Prevention of Abuse.

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(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.

(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

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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 by order of court. Local rules shall not require the filing of discovery. Any party serving discovery shall file a certificate of service of discovery document.

(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.

CREDIT(S)

Amended eff. Sept. 1, 1974; Sept. 29, 1978, eff. Nov. 1, 1978; Jan. 5, 1981, eff. Feb. 1, 1981; May 28, 1982, eff. July 1, 1982; June 19, 1989, eff. Aug. 1, 1989; June 1, 1995, eff. Jan. 1, 1996; March 28, 2002, eff. July 1, 2002; Oct. 24, 2012, eff. Jan. 1, 2013; Nov. 28, 2012, eff. Jan. 1, 2013.

Formerly Ill.Rev.Stat.1991, ch. 110A, ¶ 201.

COMMITTEE COMMENTS

(Revised June 1, 1995)

Paragraph (a)

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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,

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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)

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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

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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 (l) 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

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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)

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.

HISTORICAL NOTES

The 1989 amendment added the paragraph relating to filing materials with the clerk of the circuit court.

The 1995 amendment, in par. (a), in the first sentence, inserted "examination", deleted "or inspection" preceding "of documents", and substituted ", objects or tangible things, inspection of real estate, requests to admit and" for "or property, and"; in par. (b)(1), in the sentence defining "documents", included all retrievable information in computer storage; added subpar. (3); in par. (d), deleted "deposition or other" preceding "discovery"; in par. (e), deleted ", whether by deposition or otherwise, " following "conducting discovery"; in par. (h), deleted "deposition shall be taken or other" preceding "discovery procedure" and inserted "shall be"; in par. (i), deleted "depositions and" preceding "discovery"; rewrote par. (k), which prior thereto read:

"Reasonable Attempt to Resolve Differences Required. Every motion with respect to discovery shall incorporate a statement that after personal consultation and reasonable attempts to resolve differences the parties have been unable to reach an accord. The court may order that reasonable costs, including attorneys' fees, be assessed against a party or his attorney who unreasonably fails to facilitate discovery under this provision.";

rewrote par. (m), which prior thereto read:

"Filing Materials with the Clerk of the Circuit Court. Nothing in these rules concerning discovery shall be construed to prohibit a circuit court from adopting local rules to regulate or prohibit the filing of designated discovery materials with the clerk of the circuit court without leave of court.";

and added pars. (n) and (o).

By order (M.R. 3140) of the Supreme Court concerning application of the Discovery Rules (amended or adopted

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June 1, 1995, effective January 1, 1996, and corrected on August 23, 1995, October 5, 1995, and November 3, 1995) the Court provided:

"The Order entered June 1, 1995, amending various rules, and effective January 1, 1996, shall apply to all cases filed after such effective date as well as all cases pending on such effective date, provided that any discovery order entered in any such case prior to January 1, 1996, shall remain in effect unless and until amended by the trial court.

"All cases pending on the effective date shall hold a case management conference pursuant to Rule 218 not later than July 1, 1996."

The 2002 amendment, in par. (l), substituted "Personal Jurisdiction Motion" for "Special Appearance"; deleted the first sentence which read "Discovery shall be permitted on the issues raised in a special appearance filed pursuant to section 2-301 of the Code of Civil Procedure, provided such discovery is limited to the court's jurisdiction over the person of the defendant."; and inserted subpar. (1) and (2), relating to discovery during motions filed under section 2-301 and an objecting party's participation in a hearing regarding discovery.

An administrative order entered November 27, 2002, provides:

"*In re* Discovery Rules

"The order entered March 28, 2002, amending various rules and effective July 1, 2002, shall apply to all cases filed after such effective date as well as all cases pending on such effective date, provided that any discovery order entered in any such case prior to July 1, 2002, shall remain in effect unless and until amended by the trial court.

"Order entered November 27, 2002, effective immediately."

The October 2012 amendment rewrote par. (m), which prior thereto read: "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."

The November 2012 amendment added par. (p).

CROSS REFERENCES

Adverse party or agent, examination, see 735 ILCS 5/2-1102.
Arbitration, see 710 ILCS 5/7.
Consequences of refusal to comply with rules or order relating to discovery or pretrial conferences, see S. Ct. Rule 219.
Court martial proceedings, see 20 ILCS 1815/78.

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