

Formerly cited as IL ST CH 110A ¶ 219

*Docket 12-0324
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(5 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 219. Consequences of Refusal to Comply with Rules or Order Relating to Discovery or Pretrial Conferences**

(a) Refusal to Answer or Comply with Request for Production. If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on notice to all persons affected thereby, the proponent of the question may move the court for an order compelling an answer. If a party or other deponent refuses to answer any written question upon the taking of his or her deposition or if a party fails to answer any interrogatory served upon him or her, or to comply with a request for the production of documents or tangible things or inspection of real property, the proponent of the question or interrogatory or the party serving the request may on like notice move for an order compelling an answer or compliance with the request. If the court finds that the refusal or failure was without substantial justification, the court shall require the offending party or deponent, or the party whose attorney advised the conduct complained of, or either of them, to pay to the aggrieved party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and the court finds that the motion was made without substantial justification, the court shall require the moving party to pay to the refusing party the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.

(b) Expenses on Refusal to Admit. If a party, after being served with a request to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter of fact, the requesting party may apply to the court for an order requiring the other party to pay the requesting party the reasonable expenses incurred in making the proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made.

(c) Failure to Comply with Order or Rules. If a party, or any person at the instance of or in collusion with a party, unreasonably fails to comply with any provision of part E of article II of the rules of this court (Discovery, Requests for Admission, and Pretrial Procedure) or fails to comply with any order entered under these rules, the court, on motion, may enter, in addition to remedies elsewhere specifically provided, such orders as are just, including, among others, the following:

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- (i) That further proceedings be stayed until the order or rule is complied with;
- (ii) That the offending party be debarred from filing any other pleading relating to any issue to which the refusal or failure relates;
- (iii) That the offending party be debarred from maintaining any particular claim, counterclaim, third-party complaint, or defense relating to that issue;
- (iv) That a witness be barred from testifying concerning that issue;
- (v) That, as to claims or defenses asserted in any pleading to which that issue is material, a judgment by default be entered against the offending party or that the offending party's action be dismissed with or without prejudice; or
- (vi) That any portion of the offending party's pleadings relating to that issue be stricken and, if thereby made appropriate, judgment be entered as to that issue.
- (vii) That in cases where a money judgment is entered against a party subject to sanctions under this subparagraph, order the offending party to pay interest at the rate provided by law for judgments for any period of pretrial delay attributable to the offending party's conduct.

In lieu of or in addition to the foregoing, the court, upon motion or upon its own initiative, may impose upon the offending party or his or her attorney, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred as a result of the misconduct, including a reasonable attorney fee, and when the misconduct is wilful, a monetary penalty. When appropriate, the court may, by contempt proceedings, compel obedience by any party or person to any subpoena issued or order entered under these rules. Notwithstanding the entry of a judgment or an order of dismissal, whether voluntary or involuntary, the trial court shall retain jurisdiction to enforce, on its own motion or on the motion of any party, any order imposing monetary sanctions, including such orders as may be entered on motions which were pending hereunder prior to the filing of a notice or motion seeking a judgment or order of dismissal.

Where a sanction is imposed under this paragraph (c), the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order.

(d) Abuse of Discovery Procedures. The court may order that information obtained through abuse of discovery procedures be suppressed. If a party wilfully obtains or attempts to obtain information by an improper discovery method, wilfully obtains or attempts to obtain information to which that party is not entitled, or otherwise abuses these discovery rules, the court may enter any order provided for in paragraph (c) of this rule.

(e) Voluntary Dismissals and Prior Litigation. A party shall not be permitted to avoid compliance with dis-

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covery deadlines, orders or applicable rules by voluntarily dismissing a lawsuit. In establishing discovery deadlines and ruling on permissible discovery and testimony, the court shall consider discovery undertaken (or the absence of same), any misconduct, and orders entered in prior litigation involving a party. The court may, in addition to the assessment of costs, require the party voluntarily dismissing a claim to pay an opposing party or parties reasonable expenses incurred in defending the action including but not limited to discovery expenses, expert witness fees, reproduction costs, travel expenses, postage, and phone charges.

CREDIT(S)

Amended eff. Sept. 1, 1974; May 28, 1982, eff. July 1, 1982; July 1, 1985, eff. Aug. 1, 1985; June 1, 1995, eff. Jan. 1, 1996; March 28, 2002, eff. July 1, 2002.

Formerly Ill.Rev.Stat.1991, ch. 110A, ¶ 219.

COMMITTEE COMMENTS

(Revised June 1, 1995)

Paragraphs (a) and (b)

Paragraphs (a) and (b) of this rule were derived from former Rules 19-12(1) and (2). In 1974, Rule 214 was amended to provide for a request procedure in the production of documents and tangible things and inspection of real estate, eliminating the requirement that the party seeking such discovery obtain an order of court. Paragraph (a) of Rule 219 was amended at the same time to extend its coverage to cases in which a party refuses to comply with a request under amended Rule 214.

Paragraph (c)

Paragraph (c) is derived from former Rule 19-12(3). The paragraph has been changed to permit the court to render a default judgment against either party. This is consistent with Federal Rule 37(b)(iii), and makes effective the remedy against a balky plaintiff. The remedy was previously limited to dismissal (although it is to be noted that in former Rule 19-12(3) nonsuit and dismissal were both mentioned), and the plaintiff could presumably bring his action again, while in case of the defendant the answer could be stricken and the case decided on the complaint alone. The sanctions imposed must relate to the issue to which the misconduct relates and may not extend to other issues in the case.

Subparagraph (c) was amended in 1985 to make it clear that the sanctions provided for therein applied to violations of new Rules 220 and 222, as well as any discovery rules that may be enacted in the future. Subparagraph (c) was further amended in 1985 to recognize the trial court's continuing jurisdiction to enforce any monetary sanctions imposed thereunder for any abuse of discovery in any case in which an order prescribing such sanctions was entered before any judgment or order of dismissal, whether voluntary or involuntary (see *North Park Bus Service, Inc. v. Pastor* (1976), 39 Ill.App.3d 406), or to order such monetary sanctions, and enforce them, in any case in which a motion for sanctions was pending before the trial court prior to the filing of a notice or motion seeking a judgment or order of dismissal,

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whether voluntary or involuntary. This change in no way compromises a plaintiff's right to voluntarily dismiss his action under section 2-1009 of the Code of Civil Procedure (Ill.Rev.Stat.1983, ch. 110, par. 2-1009). It simply makes it clear that a party may not avoid the consequences of an abuse of the discovery process by filing a notice of voluntary dismissal.

Paragraph (c) has been expanded to provide: (1) for the imposition of prejudgment interest in those situations where a party who has failed to comply with discovery has delayed the entering of a money judgment; (2) the imposition of a monetary penalty against a party or that party's attorney for a wilful violation of the discovery rules; and (3) for other appropriate sanctions against a party or that party's attorney including the payment of reasonable expenses incurred as a result of the misconduct together with a reasonable attorney fee.

Paragraph (c) is expanded first by adding subparagraph (vii), which specifically allows the trial court to include in a judgment, interest for any period of pretrial delay attributable to discovery abuses by the party against whom the money judgment is entered.

Paragraph (c) has also been expanded to provide for the imposition of a monetary penalty against a party or that party's attorney as a result of a wilful violation of the discovery rules. See *Safeway Insurance Co. v. Graham*, 188 Ill.App.3d 608 (1st Dist.1989). The decision as to whom such a penalty may be payable is left to the discretion of the trial court based on the discovery violation involved and the consequences of that violation. This language is intended to put to rest any doubt that a trial court has the authority to impose a monetary penalty against a party or that party's attorney. See *Transamerica Insurance Group v. Lee*, 164 Ill.App.3d 945 (1st Dist.1988) (McMorrow, J., dissenting).

The last full paragraph of paragraph (c) has also been amended to give greater discretion to the trial court to fashion an appropriate sanction against a party who has violated the discovery rules or orders. The amended language parallels that used in Rule 137. This paragraph has also been amended to require a judge who imposes a sanction under paragraph (c) to specify the reasons and basis for the sanction imposed either in the judgment order itself or in a separate written order. This language is the same as that now contained in Rule 137.

Paragraph (d)

Paragraph (d) is new. It extends the sanctions provided for in the new rule to general abuse of the discovery rules.

Paragraph (e)

Paragraph (e) addresses the use of voluntary dismissals to avoid compliance with discovery rules or deadlines, or to avoid the consequences of discovery failures, or orders barring witnesses or evidence. This paragraph does not change existing law regarding the right of a party to seek or obtain a voluntary dismissal. However, this paragraph does clearly dictate that when a case is refiled, the court shall consider the prior litigation in determining what discovery will be permitted, and what witnesses and evidence may be barred. The consequences of noncompliance with discovery deadlines, rules or orders cannot be eliminated by taking a voluntary dismissal. Paragraph (e) further authorizes the court to require the party taking the dismissal to pay the out-of-pocket expenses actually incurred by the adverse party or parties. This rule reverses the holdings in *In re Air Crash Disaster at Sioux City, Iowa, on July 19,*

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1989, 259 Ill.App.3d 231, 631 N.E.2d 1302 (1st Dist.1994), and *Galowich v. Beech Aircraft Corp.*, 209 Ill.App.3d 128, 568 N.E.2d 46 (1st Dist.1991). Paragraph (e) does not provide for the payment of attorney fees when an action is voluntarily dismissed.

(March 28, 2002)

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

HISTORICAL NOTES

The 1995 amendment, in par. (a), in the second sentence, substituted “the proponent of the question” for “he”; in the third sentence, inserted “or her” in two places; in par. (b), in the first sentence, substituted “the requesting party” for “he” and “him”; in par. (c), in the first paragraph, substituted “fails” for “refuses”; in subpars. (ii) and (iii), substituted “the offending party” for “he”; in subpars. (v) and (vi), substituted “the offending party’s” for “his”; added subpar. (vii); rewrote the second paragraph, which prior thereto read:

“In lieu of or in addition to the foregoing, the court may order that the offending party or his attorney pay the reasonable expenses, including attorney’s fees incurred by any party as a result of the misconduct, and by contempt proceedings compel obedience by any party or person to any subpoena issued or order entered under the rules. Notwithstanding the entry of a judgment or an order of dismissal, whether voluntary or involuntary, the trial court shall retain jurisdiction to enforce, on its own motion or on the motion of any party, any order imposing monetary sanctions, including such orders as may be entered on motions which were pending hereunder prior to the filing of a notice or motion seeking a judgment or order of dismissal.”;

added the third paragraph; in par. (d), in the second sentence, substituted “that party” for “he”; and added par. (e).

By order (M.R. 3140) of the Supreme Court concerning application of the Discovery Rules (amended or adopted 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. (e), in the last sentence, substituted “expert witness fees” for “opinion witness fees.”