

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

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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 amendments to the disclosure requirements under Supreme Court Rule 213. The Committee also began to study various other discovery-related proposals.

A. Supreme Court Rule 213

The Committee devoted substantial time to discussing the problems and possible solutions surrounding the disclosure requirements contained in Rule 213. The Committee reviewed the Supreme Court Rules Committee’s proposal to amend Rule 213, as submitted to the Supreme Court. After careful study, the Committee recommended that Rule 213 not be amended as proposed. Rather, the Committee submitted to the Supreme Court for its consideration the Committee’s own proposal to amend Rule 213. The Supreme Court included both the Committee’s proposed amendment along with the Supreme Court Rules Committee’s proposal to amend Rule 213 on the agenda for the January 2002 public hearing.

B. Other Proposals Before the Committee

The Committee also reviewed several other discovery-related proposals. These proposals are described below.

1. 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. This proposal arose out of Committee discussions that attorneys’ conduct during depositions is becoming more difficult and confrontational. After considering the consequences of eliminating objections, the Committee decided not to adopt the proposed changes to Rule 206(c).

2. Supreme Court Rules Committee's Proposal to Amend Supreme Court Rule 201(l)

This proposal would amend Rule 201(l) to give flexibility to the parties and to the court in deciding whether other discovery should be conducted while a personal jurisdiction motion is pending. The proposal also would include a guideline that there must be a showing that specific discovery is needed on other issues in order to prevent injustice. The Supreme Court Rules Committee forwarded this proposal to the Committee for further review and recommendation in light of comments made at the January 2001 annual public hearing.

After careful study, the Committee recommended that Rule 201(l) not be amended as proposed. Instead, the Committee adopted its own proposal regarding amending Rule 201(l). The Committee's proposal allows, under certain circumstances, discovery to proceed on issues other than personal jurisdiction before the court rules on an objection to personal jurisdiction. In addition, the proposal recognizes that participation in discovery by the objecting party does not constitute a waiver of the objecting party's challenge to personal jurisdiction. The Committee forwarded its proposal to the Supreme Court Rules Committee for review.

3. Supreme Court Rules Committee's Proposal to Amend Supreme Court Rule 218(c)

This proposal would amend Rule 218(c), which addresses pretrial procedure, to include rebuttal witnesses within the language of the rule referring to dates set for the disclosure of witnesses and the completion of discovery. The Supreme Court Rules Committee forwarded this proposal to the Committee for its review and recommendation.

The Committee rejected the proposal because it found the proposal to create additional problems. According to the Committee, it is unrealistic to close all discovery within 60 days of trial. The Committee also contended that it is inconsistent to object to disclosing opinion witnesses and yet allow rebuttal witnesses before trial. In addition, the Committee was concerned that any proposed changes to Rule 213 would have an effect on amending Rule 218(c).

4. Supreme Court Rules Committee's Proposal to Amend Supreme Court Rule 237

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 raised questions about the intended focus of the proposal and its application. The Committee therefore forwarded its inquiry to the Supreme Rules Committee for further clarification on the proposed changes.

III. PROPOSED COMMITTEE ACTIVITIES FOR THE NEXT CONFERENCE YEAR

During the 2003 Conference year, the Committee plans to discuss the Supreme Court Rules Committee's proposal to amend Rule 218(c), which was considered at the July 2002 public hearing, and if helpful or necessary to the Rules Committee and/or the Supreme Court will make a recommendation. The Committee also plans to discuss and assess the Rules Committee's proposal to amend Rule 237, and if helpful or necessary to the Rules Committee and/or the Supreme Court will make a recommendation. Finally, the Committee will review any proposals submitted by the Rules Committee.

IV. RECOMMENDATIONS

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