

M.R. 3140

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

Order entered June 5, 2007.

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

Effective July 1, 2007, Supreme Court Rule 103 is amended and a Committee Comment to the rule is adopted, and effective immediately Supreme Court Rules 792 and 799 are amended as follows:

Amended Rule 103

Rule 103. Alias Summons; Dismissal for Lack of Diligence

(a) Alias Summonses. On request of any party, the clerk shall issue successive alias summonses, regardless of the disposition of any summons or alias summons previously issued.

(b) Dismissal for Lack of Diligence. If the plaintiff fails to exercise reasonable diligence to obtain service on a defendant prior to the expiration of the applicable statute of limitations, the action as to that defendant may be dismissed without prejudice, ~~with the right to refile if the statute of limitation has not run.~~ If the failure to exercise reasonable diligence to obtain service on a defendant occurs after the expiration of the applicable statute of limitations, the dismissal shall be with prejudice as to that defendant only and shall not bar any claim against any other party based on vicarious liability for that dismissed defendant's conduct. The dismissal may be made on the application of any ~~defendant party~~ or on the court's own motion. In considering the exercise of reasonable diligence, the court shall review the totality of the circumstances, including both lack of reasonable diligence in any previous case voluntarily dismissed or dismissed for want of prosecution, and the exercise of reasonable diligence in obtaining service in any case refiled under section 13-217 of the Code of Civil Procedure.

(c) Summonses for Additional Parties. On request, the clerk shall issue summonses for third-party defendants and for parties added as defendants by order of court or otherwise.

Amended October 21, 1969, effective January 1, 1970; amended May 28, 1982, effective July 1, 1982; amended May 20, 1997, effective July 1, 1997; amended June 5, 2007, effective July 1, 2007.

Committee Comments
(June 5, 2007)

The 2007 amendment clarified that a Rule 103(b) dismissal which occurred after the expiration of the applicable statute of limitations shall be made with prejudice as to that defendant if the failure to exercise reasonable diligence to obtain service on the defendant occurred after the expiration of the applicable statute of limitations. However, even a dismissal with prejudice would not bar any claim against any other party based on vicarious liability for that dismissed defendant's conduct.

Further, the last sentence of Rule 103(b) addresses situations where the plaintiff has refiled a complaint under section 13-217 of the Code of Civil Procedure within one year of the case either being voluntarily dismissed pursuant to section 2-1009 or being dismissed for want of prosecution. If the statute of limitations has run prior to the plaintiff's request to refile the complaint, the trial court has the discretion to dismiss the refiled case if the plaintiff failed to exercise reasonable diligence in obtaining service. The 2007 amendment applies the holding in *Martinez v. Erickson*, 127 Ill. 2d 112, 121-22 (1989), requiring a trial judge "to consider service after refiled in the light of the entire history of the case" including reasonable diligence by plaintiff after refiled.

Because public policy favors the determination of controversies according to the substantive rights of the parties, Rule 103(b) should not be used by the trial courts to simply clear a crowded docket, nor should they delay ruling on a defendant's dismissal motion until after the statute of limitations has run. See *Kole v. Brubaker*, 325 Ill. App. 3d 944, 954 (2001).

Amended Rule 792

Rule 792. The MCLE Board

(a) Administration

The administration of the program for MCLE shall be under the supervision of the Minimum Continuing Legal Education Board ("Board").

(b) Selection of Members; Qualifications; Terms

(1) The Board shall consist of ~~nine~~ 10 members, appointed by the Supreme Court ("Court"). At least one member shall be a nonattorney; at least one member shall be a circuit court judge; and one member shall be a member of the Supreme Court Commission on Professionalism. The Executive Director of the Supreme Court Commission on Professionalism shall serve as an *ex-officio* member in addition to the ~~nine~~ 10 members appointed by the Court but shall have no vote.

(2) To be eligible for appointment to the Board, an attorney must have actively practiced law in Illinois for a minimum of 10 years.

(3) Three members, including the chairperson, shall initially be appointed to a three-year term. Three members shall be appointed to an initial two-year term, and three members shall be appointed to an initial one-year term. Thereafter, all members shall be appointed or re-appointed to three-year terms. The Supreme Court Commission on Professionalism member shall be appointed to a term concurrent with his or her term on the Commission.

(4) Board members shall be limited to serving two consecutive terms.

(5) No individual may be appointed to the Board who stands to gain financially, directly or indirectly, from accreditation or other decisions made by the Board.

(6) Any member of the Board may be removed by the Court at any time, without cause.

(7) Should a vacancy occur, the Court shall appoint a replacement to serve for the unexpired term of the member.

(8) Board members shall serve without compensation, but shall be reimbursed for reasonable and necessary expenses incurred in performing their official duties, including reasonable travel costs to and from Board meetings.

(9) The chairperson shall be appointed by the Court. Other officers shall be elected by the members of the Board at the first meeting of each year.

(c) Powers and Duties

The Board shall have the following powers and duties:

(1) To recommend to the Court rules and regulations for MCLE not inconsistent with the rules of the Court and these Rules, including fees sufficient to ensure that the MCLE program is financially self-supporting; to implement MCLE rules and regulations adopted by the Court; and to adopt forms necessary to insure attorneys' compliance with the rules and regulations.

(2) To meet at least twice a year, or more frequently as needed, either in person, by conference telephone communications, or by electronic means. ~~Five~~ Six members of the Board shall constitute a quorum for the transaction of business. A majority of the quorum present shall be required for any official action taken by the Board.

(3) To accredit commercial and noncommercial continuing legal education ("CLE") courses and activities, and to determine the number of hours to be awarded for attending such courses or participating in such activities.

(4) To review applications for accreditation of those courses, activities or portions of either that are offered to fulfill the professional responsibility requirement in Rule 794(d)(1) for conformity with the accreditation standards and hours enumerated in Rule 795, exclusive of review as to substantive content. Those courses and activities determined to be in conformance shall be referred to the Supreme Court Commission on Professionalism for substantive review and approval as provided in Rules 799(c)(5) and (d)(6)(i). Professional responsibility courses or activities approved by both the Commission on Professionalism and the MCLE Board as specified in this subsection shall be eligible for accreditation by the MCLE Board.

(5) To submit an annual report to the Court evaluating the effectiveness of the MCLE Rules and the quality of the CLE courses, and presenting the Board's

recommendations, if any, for changes in the Rules or their implementation, a financial report for the previous fiscal year, and its recommendations for the new fiscal year. There shall be an independent annual audit of the MCLE fund as directed by the Court, the expenses of which shall be paid out of the fund. The audit shall be submitted as part of the annual report to the Court.

(6) To coordinate its administrative responsibilities with the Attorney Registration and Disciplinary Commission (“ARDC”), and to reimburse expenses incurred by the ARDC attributable to enforcement of MCLE requirements.

(7) To take all action reasonably necessary to implement, administer and enforce these rules and the decisions of the MCLE Director, staff and Board.

(8) To establish policies and procedures for notification and reimbursement of course fees, if appropriate, in those instances where course accreditation is withheld or withdrawn.

(d) Administration

The Board shall appoint, with the approval of the Supreme Court, a Director of MCLE (“Director”) to serve as the principal executive officer of the MCLE program. The Director, with the Board’s authorization, will hire sufficient staff to administer the program. The Board will delegate to the Director and staff authority to conduct the business of the Board within the scope of this Rule, subject to review by the Board. The Director and staff shall be authorized to acquire or rent physical space, computer hardware and software systems and other items and services necessary to the administration of the MCLE program.

(e) Funding

The MCLE program shall initially be funded in a manner to be determined by the Court. Thereafter, funding shall be derived solely from the fees charged to CLE providers and from late fees and reinstatement fees assessed to individual attorneys. This schedule of CLE provider fees, late fees, and reinstatement fees must be approved by the Court, and any reference in these Rules to a fee assessed or set by the Board means a fee based on the Court-approved fee schedule.

Adopted September 29, 2005, effective immediately; amended December 6, 2005, effective immediately; amended June 5, 2007, effective immediately.

Amended Rule 799

Rule 799. Supreme Court Commission on Professionalism

(a) Purpose

The Supreme Court Commission on Professionalism is hereby established in order to promote among the lawyers and judges of Illinois principles of integrity, professionalism and civility; to foster commitment to the elimination of bias and divisiveness within the legal and judicial systems; and to ensure that those systems

provide equitable, effective and efficient resolution of problems and disputes for the people of Illinois.

(b) Membership and Terms

(1) The Court shall appoint a Chair and ~~13~~ 14 additional members to the Commission. These members shall include three individuals who are faculty members at accredited Illinois law schools, two judges engaged in active service in the trial courts of Illinois, one judge engaged in active service in the appellate courts of Illinois, six practicing lawyers who are active members in good standing of the Illinois bar, one member of the Minimum Continuing Legal Education (MCLE) Board, and two nonlawyers who are active in public affairs in Illinois. The Administrator of the Attorney Registration and Disciplinary Commission shall serve as an *ex-officio* member in addition to the Chair and the ~~13~~ 14 members appointed by the Court but shall have no vote.

(2) In addition to the members described above, the Chief Justice may invite to serve on the Commission a judge of the United States District Courts located in Illinois.

(3) The appointed members of the Commission shall be selected with regard to their reputations for professionalism, and for their past contributions to the bar and to their communities, to the extent feasible, the appointees should reflect a diversity of geography, practice areas, race, ethnicity, and gender.

(4) Members of the Commission shall be appointed for terms of three years, except that in making initial appointments to the Commission, the Court may limit appointments to ensure that the terms of the Commission's members are staggered, so that no more than one third of the members' terms expire in any given year. The MCLE Board member shall be appointed to a term concurrent with his or her term on the Board.

(5) None of the members of the Commission shall receive compensation for their service, but all members shall be reimbursed for their necessary expenses.

(c) Duties

The Commission's duties shall include:

(1) Creating and promoting an awareness of professionalism by all members of the Illinois bar and bench;

(2) Gathering and maintaining information to serve as a resource on professionalism for lawyers, judges, court personnel, and members of the public;

(3) Developing public statements on principles of ethical and professional responsibility for distribution to the bench and bar for purposes of encouraging, guiding and assisting individual lawyers, law firms and bar associations on the ethical and professional tenets of the profession;

(4) Assisting CLE providers with the development of courses and activities offered to fulfill the professional responsibility requirement for minimum continuing legal education under Rule 794(d)(1);

(5) Determining and publishing criteria for, monitoring, coordinating, and approving, courses and activities offered to fulfill the professional responsibility

requirement for minimum continuing legal education under Rule 794(d)(1);

(6) Reviewing and approving the content of courses and activities offered to fulfill the professional responsibility requirement for minimum continuing legal education under Rule 794(d)(1) and forwarding the Commission's determination to the Minimum Continuing Legal Education (MCLE) Board;

(7) Monitoring activities related to professionalism outside the State of Illinois;

(8) Collaborating with law schools in the development and presentation of professionalism programs for law student orientation and other events as coordinated with law school faculty;

(9) Facilitating cooperation among practitioners, bar associations, law schools, courts, civic and lay organizations and others in addressing matters of professionalism, ethics, and public understanding of the legal profession; and

(10) Recommending to the Court other methods and means of improving the profession and accomplishing the purposes of this Commission.

The Commission shall have no authority to impose discipline upon any member of the Illinois bar or bench, or to exercise any duties or responsibilities belonging to either the Judicial Inquiry Board, the Attorney Registration and Disciplinary Commission, the Board of Admissions to the Bar, or the MCLE Board.

(d) Administration

(1) The Commission shall have the authority to appoint, with the approval of the Supreme Court, an Executive Director, who shall be an attorney who is an active member in good standing of the Illinois bar. The Executive Director shall have the authority to hire such additional staff as necessary to perform the Commission's responsibilities.

(2) The Commission shall meet at least twice a year and at other times at the call of the Chair. A majority of its members shall constitute a quorum for any action. Meetings may be held at any place within the state and may also be held by means of telecommunication that permits reasonably accurate and contemporaneous participation by the members attending by such means.

(3) The Chair may appoint committees of members and assign them to such responsibilities, consistent with the purposes, powers and duties of the Commission, as the Chair may deem appropriate.

(4) The Commission shall file annually with the Court an accounting of the monies received and expended for its activities, and there shall be an annual independent audit of the funds as directed by the court, the expenses of which shall be paid out of the fund.

(5) The Commission shall submit an annual report to the Court describing and evaluating the effectiveness of its activities.

(6) Approving CLE Programs.

(i) The Commission shall receive from the MCLE Board applications for accreditation of those courses and activities offered to fulfill the professional responsibility requirement for minimum continuing legal education under Rule 794(d)(1). The Commission shall establish procedures for approval of such

courses or activities consistent with the criteria published under paragraph (c)(5) of this rule. Professional responsibility courses and activities, the content of which is approved by the Commission, shall be forwarded to the MCLE Board for accreditation. Absent Commission approval, such courses and activities are not eligible for CLE accreditation. The Commission shall complete its review as expeditiously as possible and with regard to the applicable time lines contained in Rule 795.

(ii) Providers that have been designated “Accredited Continuing Legal Education Providers” under Rule 795(b) must, in addition to that accreditation, obtain Commission approval of any course or activity offered to fulfill the professional responsibility requirement of Rule 794(d)(1), but will not be required to pay an accreditation fee in addition to the fee the provider has paid to the Minimum Continuing Legal Education Board.

(e) Funding

The Commission shall be funded by an annual assessment as provided in Rule 756.

Adopted September 29, 2005, effective immediately; amended December 6, 2005, effective immediately; amended June 5, 2007, effective immediately.