

FOR IMMEDIATE RELEASE
July 16, 2010

SUPREME COURT RULES COMMITTEE TO HOLD PUBLIC HEARING ON CIVIL DISCOVERY PROPOSALS

The Rules Committee of the Illinois Supreme Court will hear comments at a public hearing on Wednesday, July 28 on three proposals dealing with discovery issues in civil cases.

The hearing is scheduled to be held at 10 a.m., 160 N. LaSalle Street, Room C-500 in Chicago.

One of the proposals would allow a party's discovery deposition to be used as evidence at trial in "extremely limited" circumstances at the discretion of the trial judge. The proposal would amend Rule 212 to allow as evidence a party's discovery deposition if the party deponent is unable to testify at trial because of death or infirmity and the judge finds "such evidence....will do substantial justice."

The rule was proposed by the Committee on Discovery Procedures of the Illinois Judicial Conference, which examined the issue after a Fifth District Appellate Court decision, *Berry v. American Standard, Inc.*, 382 Ill. App.3d 895 (2008). In that case, a plaintiff exposed to asbestos died of mesothelioma after his discovery deposition was taken, but before any evidence deposition. His videotaped discovery deposition was barred from use at trial, and without it, plaintiff's estate could not prevail at trial and summary judgment was granted to the defendants.

"The current version of the rule is absolute in its prohibition against the use of a party's discovery deposition at trial," according to the Committee Comments. "It appears, however, that there may be rare, but compelling circumstances under which a party's discovery deposition should be permitted to be used... It is expected that the circumstances that would justify use of a discovery deposition would be extremely limited."

An amendment to Rule 206 would allow any party to take a deposition by telephone, video conference or other remote electronic means by stating in the notice of deposition the specific electronic means to be used. Currently, agreement of the parties or court order is required for depositions by electronic means.

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Also open for comment is an amendment to Rule 204 which would allow any attorney licensed in Illinois to issue subpoenas in a pending action, except discovery depositions to nonparty physicians. Currently, only the court clerk is allowed to issue subpoenas upon request.

None of the proposed rules will take effect unless specifically approved by the Supreme Court.

Justice Thomas L. Kilbride is the Supreme Court liaison to the Rules Committee, and Chicago attorney John B. Simon is chair of the Rules Committee.

The full text of the proposed amendments is available on the Supreme Court website at: www.state.il.us/court/SupremeCourt/Public_Hearings/Rules/.

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