



Supreme Court of Illinois

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SUPREME COURT RULES COMMITTEE SCHEDULES PUBLIC HEARING ON PROPOSALS TO AMEND RULES ON DISCOVERY, JUROR QUESTIONS, AND INTERLOCUTORY APPEALS

The Illinois Supreme Court Rules Committee will seek comment at a public hearing Friday, April 4 in Chicago on a proposed change to address the scope of electronically stored information, limitations on its use, production, and how such information is managed.

Proposal 14-01 is presented in the form of amendments to Supreme Court Rules 201, 204, 214, 216, 218 and 219. A copy of this and other proposals are available on the Supreme Court website at: http://www.illinoiscourts.gov/SupremeCourt/Public_Hearings/Rules/default.asp

This and other proposals will be aired at a public hearing of the Supreme Court Rules Committee on Friday, April 4 at 10 a.m. in Chicago. Justice Thomas L. Kilbride serves as Supreme Court liaison to the Rules Committee. Brett K. Gorman, an attorney with Schmiedeskamp Robertson Neu & Mitchell in Quincy, is chair of the committee.

Paragraph (b)(1) of Rule 201 would change the scope of discovery from "all retrievable information in computer storage" to "electronically stored information as defined in Rule 201(b)(4)". Electronically Stored Information (ESI), defined in proposed new paragraph (b)(4), includes "any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data complications in any medium from which electronically stored information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form." This definition falls in line with the Federal Rules of Civil Procedure as mentioned in proposed new committee comments.

Certain types of ESI would generally not be discoverable unless ordered by the court as proposed in new subparagraph (q) of Rule 201. Those types of non-discoverable ESI include: deleted, slack, fragmented or unallocated data on hard drives; random access memory or other ephemeral data; on-line access data; legacy data; and backup data that is substantially duplicative of data that is more accessible elsewhere.

As well, a proposed new subparagraph (c)(3) of Rule 201 gives the court the discretion on whether or not to pursue discovery of electronically stored information if the burden or expense outweighs the likely benefits, taking into account the amount in controversy, parties' resources, importance of the issues in litigation and the importance of the requested discovery in resolving the issues.

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Proposal 13-01, also up for discussion at the hearing, would amend Supreme Court Rule 243 to limit juror questions directed to witnesses only to clarify their testimony. The limitations on direct examination set forth in Rule 213(g) would also apply to juror-submitted questions.

The Supreme Court adopted Rule 243 in April 2012 to allow jurors hearing civil cases to pose their own written questions to a witness, at the discretion of the trial judge. Jurors' questions can be admitted, modified or excluded after counsel has had a chance to object to the written question. If the question is allowed by the judge, counsel will be provided with an opportunity to ask follow-up questions limited to the scope of the new testimony.

Proposal 13-02 would amend paragraph (c)(5) of Supreme Court Rule 306. The rule would be amended to provide, upon good cause shown, proceedings in the trial court may be stayed pending resolution of an interlocutory appeal.

The Rules Committee invites public comments on the proposals. Those wishing to testify in person at the hearing on any of the proposals should direct written request to jzekich@illinoiscourts.gov or by hard copy by **Friday, March 28, 2014** to:

Committee Secretary
Supreme Court Rules Committee
c/o Administrative Office of the Illinois Courts
222 N. LaSalle Street, 13th Floor
Chicago, IL 60601

The hearing will be held April 4, 2014 beginning at 10 a.m. in Room C-500 of the Michael A. Bilandic Building at 160 N. LaSalle Street in Chicago.

No proposal would take effect unless it is specifically approved by the Illinois Supreme Court.

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(FOR MORE INFORMATION, contact: Joseph Tybor, director of communications to the Illinois Supreme Court, at 312.793.2323 or Dawn Frison Cook, senior communications specialist to the Illinois Supreme Court, at 312.793.0870)