

Reasons for the Suggested Supreme Court Rule Changes Regarding Depositions

We, the Civil Justice Committee, appointed by the Illinois Supreme Court, state our reasons for requesting the amendments to Supreme Court Rules 201 through 212. Ill. Sup. Ct. Rs. 201-12. The primary focus of our request is to promote efficiency throughout the civil courts in the State of Illinois as well as to comport with all other American jurisdictions, primarily the federal system.

Illinois Supreme Court Rule 212 sets forth the uses of the two types of deposition at trial. Ill. Sup. Ct. R. 212. A discovery deposition can only be used at trial to impeach the trial testimony of a deponent, to use as an admission against interest, to use as an exception to the hearsay rule, to use as a litigant would an affidavit, and for witnesses who are not controlled expert witnesses, to use as testimony for unavailable witnesses when the court "finds such evidence at trial ... will do substantial justice between or among the parties." Ill. Sup. Ct. R. 212(a). Evidence depositions can be used at trial for unavailable witnesses. Ill. Sup. Ct. R. 212(b). A physician can testify via an evidence deposition even if available. *Id.*

Federal Rule of Civil Procedure 32 dictates the use of depositions at a federal civil trial. Fed. R. Civ. P. 32. A party can use a deposition against a party if it complies with the Federal Rules of Evidence, *e.g.*, for impeachment and admissions against interest. Fed. R. Civ. P. 32(a). A party can only use a deposition as evidence to its advantage if the witness is unavailable. *Id.* Again, the rules appear to be very similar in deposition use.

The biggest concern that could arise with the adoption of a single deposition is that the attorneys would need to object when questions of admissibility arise. This could be handled the way that much federal civil litigants face the issue, *i.e.*, the parties agree that if the deposition is used during trial due to any reason, then they can raise objections not stated in the deposition (other than those directed to form of the question), such as those that pertain to impeachment and admissions.

As can be seen, these proposed rule changes will greatly streamline this discovery process. There still will be ways to preserve testimony, if necessary. However, it will limit the use to only those times of unavailability, just like in every other jurisdiction.

We are happy to address any questions or concerns this Court may have with the proposed rules.

Respectfully submitted,

Judge Diane Joan Larsen
Chair
Illinois Civil Justice Committee