



PO Box 588
Rochester, IL 62563
800-232-0169, 217-498-2649
F: 866-230-4415
idc@iadtc.org, www.iadtc.org

PRESIDENT
William K. McVisk
Tressler LLP, Chicago

PRESIDENT ELECT
Nicole D. Milos
AAIS, Lisle

1st VICE PRESIDENT
Laura K. Beasley
Baker Sterchi Cowden & Rice
LLC, Belleville

2nd VICE PRESIDENT
Terry A. Fox
Flaherty & Youngerman, P.C.,
Chicago

SECRETARY/TREASURER
Tracy E. Stevenson
Law Offices of Tracy E.
Stevenson, P.C., Chicago

DIRECTORS
Denise Baker-Seal
Brown & James, P.C., Belleville
C. Wm. Busse, Jr.
Busse, Busse & Grasse, P.C.,
Chicago
Adam C. Carter
Esp Kreuzer Cores LLP, Chicago
James P. DuChateau
HeplerBroom LLC, Chicago
Donald Patrick Eckler
Pretzel & Stouffer, Chartered,
Chicago
John Eggum
Foran Glennon Palandech Ponzi
& Rudloff, P.C., Chicago
Steve Grossi
Bruce Farrel Dorn & Associates,
Chicago
John P. Heil, Jr.
Heyl, Royster, Voelker & Allen,
P.C., Peoria
David A. Herman
Giffin, Winning, Cohen &
Bodewes, P.C., Springfield
Seth Lamden
Neal, Gerber & Eisenberg LLP,
Chicago
Mark J. McClenathan
Heyl, Royster, Voelker & Allen,
Rockford
Gregory W. Odom
Baker Sterchi Cowden & Rice
LLC, Belleville
Donald J. O'Meara, Jr.
Lindsay, Pickett & Postel, LLC,
Chicago
Jaime Padgett
Uber, Chicago
Untress Quinn, Sr.
Sandberg Phoenix & von
Gontard, P.C., O'Fallon
Kimberly A. Ross
Ford & Harrison, LLP, Chicago
Britta Sahlstrom
SmithAmundsen, LLC, Chicago
Patrick W. Stufflebeam
Tressler LLP, Edwardsville
John F. Watson
Craig & Craig, LLC, Mattoon
Jennifer A. Winking
Scholz, Loos, Palmer, Siebers &
Duesterhaus, Quincy

EXECUTIVE DIRECTOR
Sandra J. Wulf, CAE, IOM
Rochester

April 1, 2020

Hon. James P. Flannery, Jr.
Circuit Judge
Circuit Court of Cook County
Law Division
james.flannery@cookcountyil.gov

Re: Illinois Association of Defense Trial Counsel Response Concerning COVID-19

Dear Judge Flannery:

This is in response to your email and letter of March 30, 2020, responding to Anthony Romanucci's email letter of March 23, 2020. I am writing on behalf of the Illinois Association of Defense Trial Counsel ("IDC"). This letter will also respond to the position paper submitted by Bruce Pfaff dated March 31, 2020.

Initially, IDC wishes to thank you and the entire judiciary of Cook County for remaining open and available during this time of national crisis. We appreciate that this is an extraordinary time, and that all members of the bar must work together with the bench to try to ensure that justice continues to be served for all litigants.

We do not disagree with Mr. Romanucci about the need for all parties to work together to minimize the extent to which the current crisis disrupts ongoing litigation. However, we are concerned that the courts not lose sight of the fact that this crisis has disrupted the lives and businesses of nearly everyone. While some attorneys and litigants may have no difficulty complying with the normal burdens of discovery that accompanies litigation, there are many others for whom taking or attending a deposition, even remotely, or compiling responses to written discovery or searching for documents may simply be impossible due to restrictions on their activities or an overwhelming burden with all of the other concerns present.

For example, many attorneys representing both plaintiffs and defendants and many witnesses are parents of young children, and many of these are single parents. With all schools being closed, these parents must deal with the fact that they can no longer rely on schools and daycare to tend to their children during the normal workday. Attempting to either represent a client for or take a remote deposition under these circumstances may not be feasible.

Similarly, many businesses are closed entirely or attempting to deal with tremendous financial challenges due to this crisis. Many have had to furlough large portions of their staff. Again, dealing with depositions and even written discovery in these situations may simply be impossible because the staff responsible is not available because they or a family member are ill, quarantined, or otherwise prohibited from providing assistance by government order.

Many litigants and witnesses are health care providers and first responders. Given the current health care crisis, they may be unable to participate in litigation at all while the crisis is ongoing. This has been recognized by Magistrate Judge Fuentes in two recent orders dealing with the depositions of medical professionals. <https://www.chicagolawbulletin.com/judge-issues-rules-for-deposing-medical-providers-during-pandemic-20200323> It is hard to see how the courts can require depositions of subsequent treating physicians, or any health care defendants to be deposed, or for plaintiffs to undergo independent medical evaluations during this crisis, when everyone in the healthcare field is being pressed into service to provide medical care to those

Past Presidents: Royce G. Rowe, James Baylor, Jack E. Horsley, John J. Schmidt, Thomas F. Bridgman, William J. Voelker, Jr., Bert M. Thompson, John F. Skeffington, John G. Langhenry, Jr., Lee W. Ensel, L. Bow Pritchett, John F. White, R. Lawrence Storms, John P. Ewart, Richard C. Valentine, Richard H. Hoffman, Ellis E. Fuqua, John E. Guy, Leo M. Tarpey, Willis R. Tribler, Alfred B. LaBarre, Patrick E. Maloney, Robert V. Dewey, Jr., Lawrence R. Smith, R. Michael Henderson, Paul L. Price, Stephen Corn, Rudolf G. Schade, Jr., Lyndon C. Molzahn, Daniel Formeller, Gordon R. Broom, Clifford P. Mallon, Anthony J. Tunney, Douglas J. Pomatto, Jack T. Riley, Jr., Peter W. Brandt, Charles H. Cole, Gregory C. Ray, Jennifer Jerit Johnson, Stephen J. Heine, Glen A. Amundsen, Steven M. Puiszis, Jeffrey S. Hebrank, Gregory L. Cochran, Rick Hammond, Kenneth F. Werts, Anne M. Oldenburg, R. Howard Jump, Aleen R. Tiffany, David H. Levitt, Troy A. Bozarth, R. Mark Mifflin, Michael L. Resis, Bradley C. Nahrstadt



PO Box 588
Rochester, IL 62563
800-232-0169, 217-498-2649
F: 866-230-4415
idc@iadtc.org, www.iadtc.org

PRESIDENT
William K. McVisk
Tressler LLP, Chicago

PRESIDENT ELECT
Nicole D. Milos
AAIS, Lisle

1st VICE PRESIDENT
Laura K. Beasley
Baker Sterchi Cowden & Rice
LLC, Belleville

2nd VICE PRESIDENT
Terry A. Fox
Flaherty & Youngerman, P.C.,
Chicago

SECRETARY/TREASURER
Tracy E. Stevenson
Law Offices of Tracy E.
Stevenson, P.C., Chicago

DIRECTORS
Denise Baker-Seal
Brown & James, P.C., Belleville
C. Wm. Busse, Jr.
Busse, Busse & Grasse, P.C.,
Chicago

Adam C. Carter
Esp Kreuzer Cores LLP, Chicago
James P. DuChateau
HeplerBroom LLC, Chicago

Donald Patrick Eckler
Pretzel & Stouffer, Chartered,
Chicago

John Eggum
Foran Glennon Palandech Ponzi
& Rudloff, P.C., Chicago

Steve Grossi
Bruce Farrel Dorn & Associates,
Chicago

John P. Heil, Jr.
Heyl, Royster, Voelker & Allen,
P.C., Peoria

David A. Herman
Giffin, Winning, Cohen &
Bodewes, P.C., Springfield

Seth Lamden
Neal, Gerber & Eisenberg LLP,
Chicago

Mark J. McClenathan
Heyl, Royster, Voelker & Allen,
Rockford

Gregory W. Odom
Baker Sterchi Cowden & Rice
LLC, Belleville

Donald J. O'Meara, Jr.
Lindsay, Pickett & Postel, LLC,
Chicago

Jaime Padgett
Uber, Chicago

Untress Quinn, Sr.
Sandberg Phoenix & von
Gontard, P.C., O'Fallon

Kimberly A. Ross
Ford & Harrison, LLP, Chicago

Britta Sahlstrom
SmithAmundsen, LLC, Chicago

Patrick W. Stufflebeam
Tressler LLP, Edwardsville

John F. Watson
Craig & Craig, LLC, Mattoon

Jennifer A. Winking
Scholz, Loos, Palmer, Siebers &
Duesterhaus, Quincy

EXECUTIVE DIRECTOR

Sandra J. Wulf, CAE, IOM

Rochester

infected by COVID-19 and other serious medical conditions. The healthcare system is seriously overtaxed, and the courts should not add to that burden.

Additionally, Mr. Pfaff's cavalier dismissal of the right to be present with a client during the client's deposition fails to recognize that while lawyers consider depositions to be routine, for many litigants giving their deposition is highly intimidating and emotionally charged. These witnesses have the right to have their counsel present with them to guide them through the process and should not be required to rely on a remote connection with their attorney to obtain legal advice. Moreover, not all witnesses have easy access to reliable computer and internet connections, and under current travel restrictions, they may not be able to get to such connections.

Similarly, in cases where depositions will go through a large volume of documents, or in which the deponent will be asked to review pictures or specific items in documents, and in cases with numerous parties, remote depositions will not be feasible or will be extremely cumbersome.

We also note that the challenges of remote depositions are likely to be experienced by court reporters. While court reporters are used to dealing with parties talking over each other during depositions, this problem can be exacerbated when remote conferencing is used and could influence the accuracy of the transcript. Thus, while we support the use of remote conferencing for depositions, we also need to keep in mind its limitations.

Defense attorneys are just as motivated as plaintiffs' attorneys to continue to move their cases where it is feasible. We categorically reject the claim that defendants uniformly favor delay. On the contrary, defense clients are equally interested in expeditiously concluding litigation, and there are attorneys on both sides who delay and attorneys on both sides who work to expeditiously complete discovery and motions and get their cases ready for trial.

Reasonable attorneys on both sides should be expected to work together to continue the discovery process during this crisis to the extent that it is feasible and will not prejudice their clients. No party should use the current crisis to their tactical advantage. However, imposing a judicial requirement that all depositions take place remotely, regardless of the circumstances would be unjust, impose an undue burden on many attorneys and litigants, and would fail to account for the different circumstances faced by many people as the result of this crisis. Similarly, a rule specifying that the party noticing the deposition has control over how it is conducted disregards the fact that the attorney presenting a witness has the right to determine whether their client needs their personal presence at the deposition. Therefore, the parties need to agree about how the deposition will take place.

Accordingly, if an agreement cannot be reached, consistent with Paragraph 10(c) of Judge Evans' March 30, 2020 order, issues should be left to the motion and trial judges to exercise their discretion in determining the appropriate resolution to discovery disputes. The usual process of resolution of discovery should not be superseded by a blanket order that may not suit a particular case.

Very truly yours,

William K. McVisk
President, Illinois Association of Defense Trial Counsel

Past Presidents: Royce G. Rowe, James Baylor, Jack E. Horsley, John J. Schmidt, Thomas F. Bridgman, William J. Voelker, Jr., Bert M. Thompson, John F. Skeffington, John G. Langhenry, Jr., Lee W. Ensel, L. Bow Pritchett, John F. White, R. Lawrence Storms, John P. Ewart, Richard C. Valentine, Richard H. Hoffman, Ellis E. Fuqua, John E. Guy, Leo M. Tarpey, Willis R. Tribler, Alfred B. LaBarre, Patrick E. Maloney, Robert V. Dewey, Jr., Lawrence R. Smith, R. Michael Henderson, Paul L. Price, Stephen Corn, Rudolf G. Schade, Jr., Lyndon C. Molzahn, Daniel Formeller, Gordon R. Broom, Clifford P. Mallon, Anthony J. Tunney, Douglas J. Pomatto, Jack T. Riley, Jr., Peter W. Brandt, Charles H. Cole, Gregory C. Ray, Jennifer Jerit Johnson, Stephen J. Heine, Glen A. Amundsen, Steven M. Puiszis, Jeffrey S. Hebrank, Gregory L. Cochran, Rick Hammond, Kenneth F. Werts, Anne M. Oldenburg, R. Howard Jump, Aleen R. Tiffany, David H. Levitt, Troy A. Bozarth, R. Mark Mifflin, Michael L. Resis, Bradley C. Nahrstadt