



Charles J. Northrup
General Counsel

July 1, 2021

Krista Appenzeller
Assistant Counsel

Committee Secretary
Supreme Court Rules Committee
222 N. LaSalle Street
13th Floor
Chicago, IL. 60601

Re: ISBA Proposal to Amend Supreme Court Rule 222

Dear Committee Secretary:

On behalf of its more than 29,000 lawyer members, the Illinois State Bar Association (“ISBA”) respectfully submits to the Supreme Court Rules Committee a proposal to amend Supreme Court Rule 222 and its associated Committee Comments. The proposal is attached. The ISBA urges the Committee to review the proposed amendments and recommend their adoption to the Court.

In relevant part, Supreme Court Rule 222 (“Limited and Simplified Discovery in Certain Cases”) requires parties in certain mandatory arbitrations and civil actions unilaterally to disclose information about a case such as the nature of the claim or defense, applicable legal theories, identity of witnesses and persons with knowledge of the events at issue, and the existence of evidence or relevant documents. The timing of the disclosures can be set by local rule, although the Rule provides for a 120 day requirement where no local rule exists. It also allows litigants, with some exceptions, to propound up to 30 interrogatories. The ISBA proposed amendments would: (1) establish a more state-wide uniform, and earlier, timeframe for Rule 222 disclosures; (2) limit parties to five additional interrogatories (subject to the court’s authority to grant additional interrogatories for good cause shown); and (3) provide an explanation of the amendments via “Committee Comments” as an aide to interpretation.

The proposed amendments are a product of the ISBA’s 2019 Allerton Conference. As you may know, that Conference is a multi-day event bringing together experienced practitioners, academics, and members of the judiciary to discuss significant civil procedure and litigation related issues. With respect to Rule 222, the Conference concluded that the worthwhile intentions of the Rule were not being achieved. It appeared that in practice, the required

disclosures were often being continued until traditional discovery could take place, or that the disclosures were often rendered of little value by duplicitous discovery. The ISBA proposed amendments are designed to ensure early and prompt disclosure in order to allow litigants to better assess the need for additional, and potentially costly, discovery. The amendments are also designed to achieve greater uniformity throughout the state and impress upon litigants, and their lawyers, the purposes of the Rule.

In accordance with S. Ct. Rule 3(d) and Administrative Order MR No. 10549, the ISBA requests that the suggested revisions be forwarded to the Rules Committee or other appropriate committee for review and appropriate action.

The ISBA appreciates the opportunity to submit this proposal. If you require any additional information about the proposal, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Charles J. Northrup". The signature is written in a cursive style with a large, prominent "C" at the beginning.

Charles J. Northrup
General Counsel

enclosure

Cc: Jan Zekich (via email)

ISBA Rule 222 Proposed Amendments (July 2021)

Rule 222. Limited and Simplified Discovery in Certain Cases

(a) Applicability. This rule applies to all cases subject to mandatory arbitration, civil actions seeking money damages not in excess of \$50,000 exclusive of interest and costs, and to cases for the collection of taxes not in excess of \$50,000. This rule does not apply to small claims, ordinance violations, actions brought pursuant to 750 ILCS (FAMILIES), and actions seeking equitable relief. Except as otherwise specifically provided by this rule, the general rules governing discovery procedures remain applicable to cases governed by this rule.

(b) Affidavit re Damages Sought. Any civil action seeking money damages shall have attached to the initial pleading the party's affidavit that the total of money damages sought does or does not exceed \$50,000. If the damages sought do not exceed \$50,000, this rule shall apply. Any judgment on such claim which exceeds \$50,000 shall be reduced posttrial to an amount not in excess of \$50,000. Any such affidavit may be amended or superseded prior to trial pursuant to leave of court for good cause shown, and only if it is clear that no party will suffer any prejudice as a result of such amendment. Any affidavit filed pursuant hereto shall not be admissible in evidence at trial.

(c) Time for Disclosure; Continuing Duty. The parties shall make the initial disclosure required by this rule as fully as then possible within the following time frames: plaintiff shall make its disclosure within 28 days of the filing of the first defendant's appearance; defendants shall make their disclosures within 28 days of the filing of their own appearances.~~in accordance with the time lines set by local rule, provided however that if no local rule has been established pursuant to Rule 89 then within 120 days after the filing of a responsive pleading to the complaint, counter complaint, third party complaint, etc., unless the parties otherwise agree, or for good cause shown, if the court shortens or extends the time.~~ Parties may seek extension of the disclosure deadline for good cause shown. Upon service of a disclosure, a notice of disclosure shall be promptly filed with the court. The duty to provide disclosures as delineated in this rule and its subsections shall be a continuing duty, and each party shall seasonably supplement or amend disclosures whenever new or different information or documents become known to the disclosing party. All disclosures shall include information and data in the possession, custody and control of the parties as well as that which can be ascertained, learned or acquired by reasonable inquiry and investigation.

(d) Prompt Disclosure of Information. Within the times set forth in section (c) above, each party shall disclose in writing to every other party:

(1) The factual basis of the claim or defense. In the event of multiple claims or defenses, the factual basis for each claim or defense.

(2) The legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities.

(3) The names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call at trial with a designation of the subject matter about which each witness might be called to testify.

(4) The names, addresses, and telephone numbers of all persons whom the party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to the action, and the nature of the knowledge or information each such individual is believed to possess.

(5) The names, addresses, and telephone numbers of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements.

(6) The identity and address of each person whom the disclosing party expects to call as an expert witness at trial, plus the information called for by Rule 213(f).

(7) A computation and the measure of damages alleged by the disclosing party and the document or testimony on which such computation and measure are based and the names, addresses, and telephone numbers of all damage witnesses.

(8) The existence, location, custodian, and general description of any tangible evidence or documents that the disclosing party plans to use at trial and relevant insurance agreements.

(9) A list of the documents or, in the case of voluminous documentary information, a list of the categories of documents, known by a party to exist whether or not in the party's possession, custody or control and which that party believes may be relevant to the subject matter of the action, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the dates(s) upon which those documents will be made, or have been made, available for inspection and copying. Unless good cause is stated for not doing so, a copy of each document listed shall be served with the disclosure. If production is not made, the name and address of the custodian of the document shall be indicated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

(e) Affidavit re Disclosure. Each disclosure shall be made in writing, accompanied by the affidavit of an attorney or a party which affirmatively states that the disclosure is complete and correct as of the date of the disclosure and that all reasonable attempts to comply with the provisions of this rule have been made.

(f) Limited and Simplified Discovery Procedures. Except as may be ordered by the trial court, upon motion and for good cause shown, the following limited and simplified discovery procedures shall apply:

~~(1) A maximum of five written interrogatories, including subparts, may be served and shall not seek information duplicative of the disclosures required by Rule 222(d). Any interrogatory in the form prescribed by the Supreme Court pursuant to Supreme Court Rule 213 shall be counted as one interrogatory, regardless of the number of subparts. Additional interrogatories may be issued only with leave of court upon good cause shown. Each party may propound to any other party a total of 30 interrogatories and supplemental interrogatories in the aggregate, including subsections. Interrogatories may require the disclosure of facts upon which a party bases a claim or defense, the enumeration, with proper identification, of all persons having knowledge of relevant facts, and the identification of trial witnesses and trial exhibits.~~

(2) Discovery Depositions. No discovery deposition shall exceed three hours, absent agreement among the parties. Except as otherwise ordered by court, the only individuals whose discovery depositions may be taken are the following:

(a) Parties. The discovery depositions of parties may be taken. With regard to corporations, partnerships, voluntary associations, or any other groups or entities, one representative deponent may be deposed.

(b) Treating Physicians and Expert Witnesses. Treating physicians and expert witnesses may be deposed, but only if they have been identified as witnesses who will testify at trial. The provisions of Rule 204(c) do not apply to treating physicians who are deposed under this Rule 222. The party at whose instance the deposition is taken shall pay a reasonable fee to the deponent, unless the deponent was retained by a party to testify at trial or unless otherwise ordered by the court.

(3) Evidence Depositions. No evidence depositions shall be taken except pursuant to leave of court for good cause shown. Leave of court shall not be granted unless it is shown that a witness is expected to testify on matters material to the issues and it is unlikely that the witness will be available for trial, or other exceptional circumstances exist. Motions requesting the taking of evidence depositions shall be supported by affidavit. Evidence depositions shall be taken to secure trial testimony, not as a substitute for discovery depositions.

(4) Requests pursuant to Rules 214 and 215 are permitted, as are notices pursuant to Rule 237.

(5) Requests pursuant to Rule 216 are permitted except that no request may be filed less than 60 days prior to the scheduled trial date or, if within said 60 days, only by order of court.

(g) Exclusion of Undisclosed Evidence. In addition to any other sanction the court may impose, the court shall exclude at trial any evidence offered by a party that was not timely disclosed as required by this rule, except by leave of court for good cause shown.

(h) Claims of Privilege. When information or documents are withheld from disclosure or discovery on a claim that they are privileged pursuant to a common law or statutory privilege, any such claim shall be made expressly and shall be supported by a description of the nature of the documents, communications or things not produced or disclosed and the exact privilege which is being claimed.

(i) Affidavits Wrongly Filed. The court shall enter an appropriate order pursuant to Rule 219(c) against any party or his or her attorney, or both, as a result of any affidavit filed pursuant to (b) or (e) above which the court finds was (a) false; (b) filed in bad faith; or (c) was without reasonable factual support.

(j) Applicability Pursuant to Local Rule. This rule may be made applicable to additional categories of cases pursuant to local rules enacted in any judicial circuit.

Adopted June 1, 1995, effective January 1, 1996; amended March 28, 2002, effective July 1, 2002; amended February 10, 2006, effective July 1, 2006; amended October 1, 2010, effective January 1, 2011; amended _____, effective _____.

Committee Comments

(October 1, 2010)

Subparagraph (f)(5) has been added to provide a time frame for the issuance in anticipation of a trial date.

(Amendment Date)

This Rule has been amended to show that written discovery beyond the scope of disclosure required under Supreme Court Rule 222 is limited absent leave of court for good cause shown. The purpose behind the Rule is to limit and simplify discovery, but the Committee believes that this purpose is frustrated when the Rule's required disclosures are simply in addition to the burden of other written discovery methods. In the context of this Rule, "good cause" will normally involve an exploration of why the required automatic disclosures were insufficient such that additional written discovery might be necessary.