

Step by Step Guide to Illinois Litigation

Quickly find detailed and authoritative answers to difficult questions concerning pleadings, motions, discovery, and more

This landmark new work from Kevin G. Owens, Timothy W. Kelly, and Judge Jennifer Duncan-Brice probes every step of civil procedure before trial.

The book's issue-oriented outline format is supported by **1,900 citations**, **110 forms**, advice from the bench, recent case-based illustrations, practice-proven strategies, step-by-step procedures, pattern language, and a full-text CD. Coverage runs from taking the case up to trial, and includes numerous tips on how to:

- Avoid and fix mistakes
- Resolve peripheral disputes
- Craft better documents
- Answer ethical questions
- Process cases efficiently
- Improve your advocacy

Focused on Issues

Illinois Pretrial Practice concentrates on the topics where questions and disputes arise. It devotes pages where you spend time: drafting pleadings, preparing and presenting motions, conducting discovery, resolving discovery disputes, and negotiating settlements. You will find coverage of troublesome matters like:

Written Discovery

Techniques for obtaining damaging documents. §22:60

How to obtain a log of privileged documents. §22:45

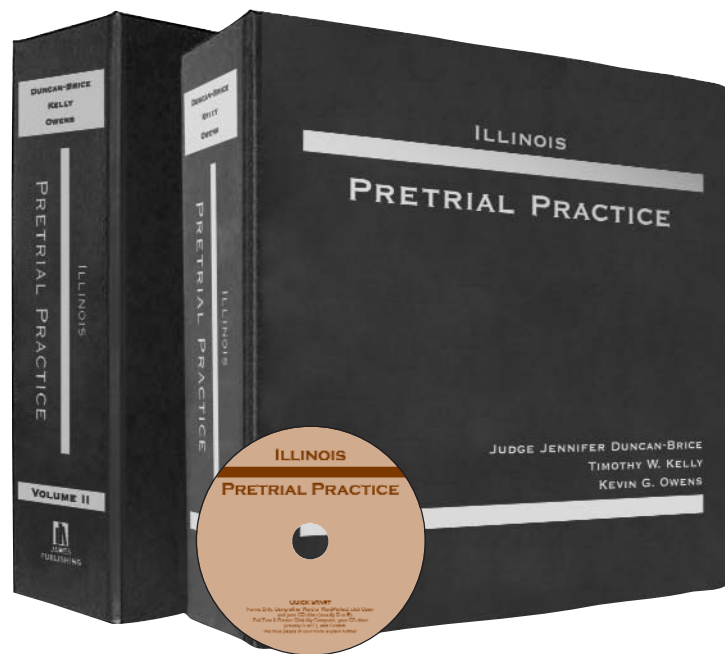
Satisfying the "particularity" requirement. §22:64

What is and isn't discoverable. §20:20

How to expedite discovery. §20:110

Tips for crafting "objection-proof" interrogatories. §25:180

Dealing with problem interrogatories. §25:290



**Only \$129
for two big
volumes, 110
electronic
forms, and a
full-text CD**

This unique law and procedure outline delivers a new level of practicality, quality, thoroughness, ease of use, and affordability

Responding to missing, evasive, or incomplete answers. §25:274

How to correct an inadvertent disclosure. §22:303

Privileges

Unauthorized disclosure by agent. §21:62

Placing privileged matter at issue. §21:90

Protecting lawyer-client communications. §21:110

In-house attorney challenges. §21:112

Unprivileged attorney-client items. §21:122

What is and is not work product. §21:180

What constitutes a trade secret. §21:230

Scope and limitations of patient-physician privilege. §21:250

Therapist-patient communications. §21:280

Motions

Strategic considerations. §14:13

Pitfalls to avoid. §14:20

Practical advice on pagination, titling, parties' names, etc. §14:21

Brief-drafting tips. §14:60

Service timing issues. §14:112

Grounds for disqualifying the judge. §14:190

Practical hearing suggestions from the bench. §14:340

Motions requiring evidentiary hearings. §14:350

Grounds for emergency motions. §14:380

**Sample pages and
tables of contents
and forms inside...**

precisely describe, do so in a series of narrowly drawn item-specific requests.

EXAMPLE:

Request No. 21

The promissory note signed by ABC Corp. in favor of Acme Co., dated June 1, 2001.

IN PRACTICE: USE PROTECTIVE ORDER TO ESTABLISH POSSESSION

Even if your client has copies of certain key documents in its possession, you may still want to request production from an opposing party to establish their receipt, knowledge, and possession by the other party.

§§22-67-22-79 Reserved

II. By-Category Requests

§22-80 Purpose

In most cases you will not have enough information to describe each relevant document in your opponent's possession, custody, or control. Thus, in addition to individual-item requests, requests by category are necessary. They can yield large volumes of information and maximize your chances of getting all the important documents.

IN PRACTICE: Overlay With Individual-Item Requests

Individual-item requests (like all requests) may be subject to a respondent's overly literal interpretation. As a result, even a document you describe with particularity may show up missing from the items produced by respondent. To combat this problem, use individual-item requests like a baseball catcher's mitt and categorical requests like the back-stop behind home plate. That is, use them together to maximize your chances of obtaining the specific items you seek; items that get by the mitt should not get by the backstop.

EXAMPLES:

Individual-Item Request

Request No. 5
The letter from Acme Co. president Peter Dean to ABC Corp. CEO Mary Baker, dated March 15, 2001.

By-Category Request

Request No. 25

All documents that constitute or concern communications between Acme Co. and ABC made between January 1, 2000 and January 1, 2002.

§22-81 Too Broad

A broadly drafted by-category request may draw objection for imposing an undue burden on respondents. And if that objection is aired in court (through requester's motion to compel or respondent's motion for protective order), it may make requesting counsel appear unreasonable to the judge.

In addition, if respondents produce carloads of responsive documents, requesting counsel will have to spend lots of time and effort separating the wheat from the chaff.

EXAMPLE OF OVERBROAD REQUEST:

Request No. 1

All documents relating to communications between Acme Co. and ABC Corp.

IN PRACTICE: Documents "relating to..."

Terms like "relating to" or "communication" are broad terms, susceptible of different interpretations, which may lead to genuine confusion or deliberate obfuscation. Thus instead of using "relating to," some lawyers use a verb and a cumbersome causal phrase, like "All documents disclosing, analyzing, conditioning, referring to, concerning, or whose subject matter includes..." A better approach is to seek a single or short term, e.g., "discussing or relating to" and define it in the Definitions section.

COM:

A

report

and

ex-

hibit

legit

request

(e.g., a

day's

change

§22-82

On

reasonable

less likely

to

be

able

to

obtain

the

documents

re-

quired

by

the

party

in

the

discovery

process

and

to

the

extent

of

the

discovery

process

and

to

the

extent

of

the

discovery

process

and

to

the

extent

of

the

discovery

process

and

to

the

extent

of

the

discovery

process

and

to

the

extent

of

the

discovery

process

and

to

the

extent

of

the

discovery

process

and

to

the

extent

of

the

discovery

process

and

to

the

extent

of

the

discovery

process

and

to

the

extent

of

the

discovery

process

and

to

the

extent

of

the

discovery

process

and

to

the

extent

of

the

discovery

process

and

to

the

extent

of

the

discovery

Sophisticated strategies: Advantages and disadvantages of particular tactics, with citations, to help you choose the wisest course.

§26-92

ILLINOIS PRETRIAL PRACTICE

26-12

§26-92 Timing Strategies

If served early, RFAs can narrow the scope of future discovery (saving you time and money) by eliminating some of the issues in dispute (see §26-20). Similarly, RFAs can pinpoint areas of inquiry for follow-up interrogatories and deposition questions (see §26-51). Thus, don't wait until discovery is almost complete before serving your first set of requests.

IN PRACTICE: Serve First Set ASAP

RFAs admissions are the cheapest way to establish facts. Thus, to avoid spending your client's money needlessly, send the first set of RFAs as soon as possible. Respondent will have sufficient information to admit or deny many of your early requests. And even if respondent has insufficient information to answer an early request, you will not have to repeat that request later to get a substantive response. That is, respondent has a duty to supplement the response to reflect later-acquired information (see §26-105).

Serve a *later* set of RFAs to nail down information you obtained in prior discovery (see §26-50). That is, propound a follow-up set after you take the case's important depositions and receive your opponent's interrogatory responses.

Do not wait until close to trial before serving your final RFA. Your trial strategy may depend on the RFA responses. And when calculating the time you need to beat the RFA cutoff date, remember that RFAs can trigger respondent's motion for protective order; and may require you to challenge inadequate responses or objections. Such discovery disputes require additional time to resolve.

In most cases, the best practice is to serve your final RFA as soon as you are fully prepared to do so. And serve your final RFA at least thirty days before trial.

§26-93 Service Requirements

If the party is represented by an attorney, serve the attorney at the attorney's office. [SCR 11(a)(b)(1).] If the party is not represented by an attorney, serve the requests directly on the party. [SCR 11(a)(b)(2).] • Serve the RFAs on all the parties in the case. [SCR 11(c).]

If one attorney appears for more than one party, one copy is sufficient. Similarly, if a party is represented by more than one attorney, service on one of the attorneys is sufficient. [SCR 11(c).]

[For whom RFAs may be served on, see §26-63; for service generally, see Ch. 9, Summary, Service of Process, and Appendix.]

IN PRACTICE: Serve Multiple Parties or Attorneys

As a professional courtesy, you may want to provide more than one copy for an attorney representing more than one party, or you may want to provide more than one attorney when a party has multiple attorneys.

IN PRACTICE: Get a Return Receipt

You can eliminate the possibility of an opposing statement denying service by obtaining a signed return receipt through service by certified mail. In addition, a signed return receipt eliminates potential conflict over the commencement of the twenty-eight (28) day time limit for a response.

§26-94 Filing

Requests for admission are generally classified as a discovery device, and are treated as such in practice. [Bright v. Dieke, 166 Ill.2d 204, 652 N.E.2d 275 (1995).] Discovery materials are not filed with the court except on leave of the court, or as required by local rules. [SCR 201(c).]

CAUTION: CONSULT LOCAL RULES

Some circuit courts require that all discovery materials, including RFAs, be filed with the court, while others do not.

§§26-95-26-99 Reserved

IV. RESPONDING TO RFAs

A. General Points

§26-100 Harsh Consequences

Requests for admission are potentially dangerous because they are treated as binding and incontrovertible. [People v. Mindham, 253 Ill. App. 3d 792, 625 N.E.2d 833, 143 Ill. Dec. 680 (2d Dist. 1993); for details, see §26-200.] In contrast, most other evidence obtained through discovery is not conclusive. [SCR 201(j).] Thus, if respondent makes and does not dispute the court will grant it. [See §26-240 (f).] Thus, when served with RFAs, respond carefully and timely.

quet litigation is privileged. [Waste Management v. International Lease Inc., 144 Ill.2d 178, 579 N.E.2d 322, 161 Ill. Dec. 774 (1991).]

§§21-185-21-189 Reserved

B. Elements of Work Product

1. RULE REQUIREMENTS

§21-190 Material Prepared for Trial

The work product doctrine applies only to materials prepared for trial. [SCR 201(b)(2); Myznarski v. Rush-Preiss, St. Luke's Medical Center, 213 Ill. App. 3d 427, 572 N.E.2d 1025, 157 Ill. Dec. 561 (1st Dist. 1991).] This covers documents prepared in anticipation of litigation, as well as those prepared during litigation. [Dalen v. Ortiz Corp., 230 Ill. App. 3d 18, 171 Ill. Dec. 465, 594 N.E.2d 1365, 157 Ill. Dec. 561 (2d Dist. 1992).]

§21-191 Disclosing Mental Impressions of Attorney

The work product doctrine applies only to information containing theories, mental impressions, or litigation plans of the attorney. [SCR 201(b)(2); Myznarski v. Rush-Preiss, St. Luke's Medical Center, 213 Ill. App. 3d 427, 572 N.E.2d 1025, 157 Ill. Dec. 561 (1st Dist. 1991).] Therefore, work product protection does not apply to objective facts. So if an item (writing, drawing, graph, chart, photograph, or video) is limited to objective facts it is discoverable because it does not contain the mental processes of the attorney. [Stawberg v. Owens Corning Fiberglast Corp., 213 Ill. App. 3d 735, 576 N.E.2d 28, 159 Ill. Dec. 359 (1st Dist. 1991).]

However, the preparation of objective evidence may fall within the work product of an attorney who directs and oversees the production of the tangible item. For example, although a "Bay in the Life of Movie" is admissible into evidence, information regarding how the attorney had the film taken and the presence of the opposing counsel at the taping is a part of the attorney's work product and is not discoverable. [Cisneros v. Palms Community Hospital, 144 Ill. 2d 339, 579 N.E.2d 183, 162 Ill. Dec. 159 (1991).]

Documents prepared in the usual course of business that do not contain attorney impressions do not qualify as work product items. For example, if an attorney or an investigator takes a verbatim statement from a witness, that statement is not protected under the work product doctrine. [Myznarski v. Rush-Preiss, St.

Luke's Medical Center, 213 Ill. App. 3d 427, 572 N.E.2d 1025, 157 Ill. Dec. 561 (1st Dist. 1991).]

§21-192 Mix of Covered and Non-Covered Matters

If an attorney's notes contain a combination of factual matters and conclusions, characterizations and summaries, the court will not require disclosure of the records unless the party seeking the information can show that it is absolutely impossible to acquire the factual information in any other way. Generally, a court will not sift through voluminous information to determine what is discoverable and what is not discoverable. [Myznarski v. Rush-Preiss, St. Luke's Medical Center, 213 Ill. App. 3d 427, 572 N.E.2d 1025, 157 Ill. Dec. 561 (1991).]

§§21-193-21-199 Reserved

2. EXAMPLES OF RULE

§21-200 Witness Statement From Attorney's Notes

If you, as an attorney and in anticipation of litigation, interview a witness and put in writing what the witness stated were the facts, the writing is not work product and is discoverable. [SCR 201(b)(2); Waste Management v. Superior Lines Insurance, 144 Ill. 2d 178, 579 N.E.2d 322, 161 Ill. Dec. 774 (1991).]

However, if you create a document that is a combination of a memorandum of the oral conversation with a witness and notes of your own mental impressions, conclusions, or legal thoughts, that is generally opinions, recollection, or legal theories, that is generally not discoverable. [Myznarski v. Rush-Preiss, St. Luke's Medical Center, 213 Ill. App. 3d 427, 572 N.E.2d 1025, 157 Ill. Dec. 561 (1st Dist. 1991).]

15-13

ATTACHING THE PLEADINGS

§15-72

§15-72

The amendment is timely.

• Previous opportunities to amend have been given.

[Mathell v. Norman James Construction Co., 291 Ill. App. 3d 97, 684 N.E.2d 872, 225 Ill. Dec. 881 (1st Dist. 1997).]

IN PRACTICE: ATTACH THE PROPOSED AMENDMENT

In responding to a motion to dismiss, the most common mistake made by plaintiffs is the failure to attach the proposed amended complaint. The court will be hard-pressed not to permit the amendment if the attachment demonstrates that the defect can be cured.

On the other hand, the absence of an amended pleading adds to the trial judge that the defect is curable. Moreover, it also leaves the appellate court in the dark, because there is no amended complaint in the record.

§§15-61-15-69 Reserved

2. FAILURE TO PLEAD AN ESSENTIAL ELEMENT

§15-70 Claim Subject to Dismissal

If the plaintiff fails to plead the essential elements of a cause of action, the claim is subject to dismissal under 735 ILCS 5/2-615. [Kovacs v. Board of Election Comm'n., 287 Ill. App. 3d 581, 681 N.E.2d 514, 224 Ill. Dec. 199 (1st Dist. 1997).] The cause of action may be dismissed either with or without prejudice. The court should dismiss the claim with prejudice if facts cannot be pleaded to cure the defect.

§15-71 Examples: Essential Element Missing

• Race car driver's wife was not within "zone of danger" for negligent infliction of emotional distress, when she was in grandstand and husband, a race car driver pulled into the infield and died of a heart attack. [Hobson v. James P. Park Estate, Inc., 298 Ill. App. 3d 1014, 700 N.E.2d 194, 233 Ill. Dec. 93 (1st Dist. 1999) (dismissed with prejudice).]

• Plaintiff suing school district for molestation of her son by school employee failed to allege district was negligent in hiring the employee. [Muller v. Community Consol. Sch. Dist., 34-387 Ill. App. 3d 337, 678 N.E.2d 666, 222 Ill. Dec. 788 (1st Dist. 1997) (plaintiff should have been given opportunity to amend).]

• Complaint in general terms about possible future

Chapter 15

ATTACKING THE PLEADINGS

QUICK VIEW

Definitions: Pleadings may be challenged by several devices before the case progresses to the merits. A defective pleading may be challenged by means of a motion to strike or to dismiss under 735 ILCS 5/2-615. Or, a party challenging a pleading may demand a bill of particulars. Motions to dismiss a pleading for enumerated bases that may or may not appear on the face of the pleading may be filed under 735 ILCS 5/2-619.

Scope:

- Rules and techniques applicable to using the various motions to challenge the complaint and other pleadings.
- Grounds for the various devices.
- Procedural requirements.
- Each device compared with similar motions and pleas.
- Tactical considerations.

Strategies and Tactics:

- Review the complaint carefully to determine the appropriate devices to attack it.
- Decide whether to raise challenges in the answer or a motion.
- Prepare to have your motion heard before trial.
- Check local rules and the judge's individual requirements for your motion.
- Prepare for hearing.

Statutes and Rules: 735 ILCS 5/2-615; 2-619; 2-619.1; 2-619.2

Related Topics: Summary Judgment, Ch 30, Motion Practice

Forms: See the CD for the following forms:

- Form 15-10, Motion to Dismiss for Failure to State Claim
- Form 15-20, Motion to Strike
- Form 15-30, Motion to Dismiss Punitive Damages Claim
- Form 15-40, Demand for Bill of Particulars
- Form 15-50, Response to Demand for Particulars
- Form 15-60, Motion to Dismiss: Claim Released
- Form 15-70, Motion to Dismiss: Statute of Frauds
- Form 15-80, Motion to Dismiss: Immune
- Form 15-90, Motion to Dismiss Pursuant to 2-619.1

Forms: Over 110 forms on disk for easy adaptation. All forms conform to today's rules and practice needs.

Quick overview: Rapidly find relevant information with each chapter's single-page summary. It defines the topic, details the scope, lists strategies and tactics, cites main rules, and cross-references related topics.

15-7

ATTACKING THE PLEADINGS

§15-12

I. CHALLENGING DEFECTIVE PLEADINGS (735 ILCS 5/2-615)

A. Nature and Purpose

§15-01 Motion Attacks Defects in Pleadings

The purpose of a motion brought under 735 ILCS 5/2-615 is to bring defects in a pleading to the court's attention. [*Palmer v. A&K Insulation Co.*, 206 Ill App 3d 320, 640 NE2d 21, 203 Ill Dec 594 (3d Dist 1994).] Depending on the nature of the defect, the court may give the pleading party an opportunity to correct the defects, or it may strike all or a portion of a pleading or dismiss the action.

At common law, the demurrer was commonly used to attack defects in a pleading, but the legislature has abolished demurrers. The 2-615 motion has evolved as a vehicle for attacking the legal sufficiency of a complaint or other pleading as well as for challenging other defects in a pleading.

A 2-615 motion applies to all pleadings, including answers and affirmative defenses. [735 ILCS 5/2-615(a).]

§15-02 Relief Available

A motion challenging a pleading under 735 ILCS 5/2-615 must identify the defects in the pleading and request specific relief, such as that:

- The pleading, or part of it, be stricken as legally insufficient.
- The action be dismissed.
- The pleading be made more definite and certain.
- Designated immaterial matter be stricken.
- Necessary parties be added, or misjoined parties dismissed.

[735 ILCS 5/2-615(a).]

§§15-03-15-09 Reserved

B. Legal Requirements

§15-10 Bases for Motion

A motion under 735 ILCS 5/2-615 may be directed to any defect that appears on the face of the pleading. 2-615 motions are commonly brought on the following bases, among others:

- That the pleading fails to allege facts sufficient to state a cause of action.
- That the pleading is substantially insufficient in law.

- That the pleading entitles the moving party to judgment on the pleadings.
- Nonjoinder or misjoinder of parties.
- That the challenged pleading is uncertain.
- Various other pleading defects. (see 15-50 ff.)

[*Barber-Culman v. A&K Midwest Insurance Co.*, 236 Ill App 3d 1055, 1069, 603 NE2d 1215, 177 Ill Dec 844 (1st Dist 1992).]

§15-11 Motion Must Be Designated as Such

When a motion is brought under 735 ILCS 5/2-615, it must be designated as such; failure to designate it properly may cause problems. Some trial judges will not entertain a motion unless it is properly designated.

Failure to designate a motion may also cause problems on appeal. If the failure prejudices the responding party, an appellate court will reverse the trial court's favorable ruling on the motion. [*Becker v. Cold*, 249 Ill App 3d 857, 619 NE2d 765, 189 Ill Dec 64 (3d Dist 1993).]

§15-12 Only Defects Apparent on Face of Pleading

If the motion may be determined from the face of the pleading, i.e. if it raises a pleading defect, a 2-615 motion is proper. However, if the motion calls for consideration of matters not apparent from the pleadings, a motion under 735 ILCS 5/2-619 or a motion for summary judgment should be used instead.

All the well-pleaded facts in the complaint are taken as true. [*Call Awareness Network v. Church of Scientology International*, 172 Ill 2d 507, 685 NE2d 1347, 226 Ill Dec 604 (1997).] Exhibits attached to a pleading are considered to be part of the pleading for purposes of a motion under 5/2-615. [*Kirchner v. Greer*, 294 Ill App 3d 672, 691 NE2d 107, 229 Ill Dec 171 (1st Dist 1998).] See §15-104 (exhibits control of exhibits and pleadings conflict.) All reasonable inferences from the facts alleged are also taken as true. [*Lewis v. City of Chicago*, 278 Ill App 3d 628, 662 NE2d 1377, 215 Ill Dec 237 (1st Dist 1996).] However, the facts must relate to the elements of the claim; if the allegations are conclusory with no facts to support those conclusions, a 2-615 motion is appropriate. [*Lewis v. City of Chicago*, 278 Ill App 3d 628, 662 NE2d 1377, 215 Ill Dec 237 (1st Dist 1996).] See Ch 13, Pleadings regarding conclusory allegations.]

CASE EXAMPLE: Plaintiff filed for summary judgment, as to the underlying claim, and moved under 2-

Recent cases: Current and summarized cases explain the supported principle, rather than lengthy string citations with no differentiation.

Available for a 30-day review (800) 440-4780 or www.JamesPublishing.com



110 Forms on CD

Taking the Case

New Client Information Sheet, General Fee Agreement, Contingency Fee Agreement, Medical Negligence Contingency Fee Agreement, Family Law Engagement Agreement, Family Law Statement of Client's Rights and Responsibilities, Motion to Withdraw, Order of Withdrawal, Attorney Lien Waiver, Substitution of Counsel, Entry of Appearance

Presuit Activities

Request for Accident Report, Request for Copy of Traffic Ticket, Authorization to Release Employment Records, Request for Employment Records, Authorization to Release Medical Information, Request for Medical Records, Request for Aerial Photo,

Notice of Claim Against State, Settlement Demand Letter, Notice of Attorney's Lien, Request for Policy Limits, Policy Limits Settlement Demand, Petition for Discovery Before Suit -- Products Liability, Petition -- Assault

Forum Selection

Forum Selection Clause, Motion to Transfer Venue for Improper Venue, for Fraudulently Joined Party, Motion to Dismiss for Forum Non Conveniens

Summons & Service

Summons Requiring Appearance on Specified Day, Summons Requiring Appearance Within 30 Days After Service

Parties

Petition to Appoint a Guardian as Litem, Order Appointing a Guardian as Litem, Motion

for Leave to Add Additional Parties, Order for Leave to Join as Additional Parties, Motion for Substitution of a Party, Ex Parte Application for Order Substituting Party, Motion of Executor to Be Substituted as Plaintiff, Order Substituting Executor as Plaintiff, Motion to Appoint a Special Administrator, Motion to Dismiss for Failure to Substitute Party After Plaintiff's Death, Complaint in Interpleader, Complaint, Order Granting Leave to File Third-Party Complaint, Third-Party Complaint, Petition to Proceed Under a Fictitious Name, Order of Petition to Proceed Under Fictitious Name

Pleadings

Caption, Personal Injury Complaint, Subrogation Complaint, Breach of Contract Complaint, Breach of Retail Installment Contract, Answer with Separate Defenses, Counterclaim Caption, Counterclaim as Separate Pleading

About the Authors

Judge Jennifer Duncan-Brice

began her legal career in 1975 as a law clerk in the City of Chicago's Office of Corporation Counsel. In 1976 she became Assistant Corporation Counsel, working in the Litigation Division and primarily representing the Chicago Police Department and police officers on civil rights actions in federal court. In 1982 she was transferred to the Real Estate Division, handling condemnation cases and representing the Landmark Commission.

In 1985 she was promoted to Chief Assistant Corporation Counsel and was assigned to reorganize the Torts Division. In 1987, she was promoted to Deputy Corporation Counsel.

In 1992 she was elected a judge to the Circuit Court of Cook County, and was assigned generally to the Law Division. Judge Duncan-Brice was assigned to a Motion Call in 1994 and a General Calendar Call in 1996.

Judge James P. Flannery, Jr.,

became a judge in 1988. He is currently assigned to the Law Division of

the Circuit Court, Cook County. He has been assigned to the Law Jury section since 1997. He was previously assigned to the Criminal Division, the Fourth Municipal Division, and the First Municipal Division. Before becoming a judge, he practiced law with the firm of Murphy, Preston and Jaffe, the Office of the Illinois Attorney General, and the Office of the Corporation Counsel for the City of Chicago.

Timothy W. Kelly focuses on personal injury and medical malpractice cases, working out of his own firm with offices in Bloomington and Chicago.

He has served as Chair of the Civil Practice and Procedure Section Council of the Illinois State Bar Association, Manager of the Illinois Trial Lawyers Association, and board member of IICLE.

Mr. Kelly has lectured and written extensively for IICLE and ISBA. He is the author of IICLE's *Laying Foundations for Introducing Evidence*

and *Proving Damages in Personal Injury Cases*, and is co-editor of IICLE's *Illinois Causes of Action*.

Kevin G. Owens is a shareholder in Chicago law firm of Johnson & Bell. His practice includes the defense of product liability, construction, and negligence actions, and commercial loan foreclosures and workouts, construction product defects, and litigation of contract actions at law and equity.

Mr. Owens is a frequent lecturer and panelist at CLE programs, and has spoken on the defense of slip and fall cases, legal issues of private security officers, hotel oriented claims, and medical device litigation.

He has served on the Judicial Evaluation Committee of the Chicago Bar Association, and has chaired the fall seminar of the Illinois Association of Defense Trial Counsel.

Forms continued from previous page

Attacking the Pleadings

Motion to Dismiss for Failure to State Claim, Motion to Strike, Motion to Dismiss Punitive Damages Claim, Demand for Bill of Particulars, Responses to Demand for Particulars, Motion to Dismiss: Claim Released, Statute of Frauds, Immune, Pursuant to 2-619.1

Discovery

Sample Discovery Plan, Stipulation to Extend Discovery, Stipulated Protective Order, Acknowledgment of Stipulated Protective Order, Subpoena for Discovery of Documents Pursuant to Supreme Court Rule 204(a)(4)

Production of Documents and Things

Stipulation to Extend Discovery, Stipulated Protective Order, Request for Production,

Motion to Quash Subpoena for Deposition and for a Protective Order

Physical & Mental Exams

Stipulation for Physical Examination, Motion for Physical or Mental Examination, Order for Physical or Mental Examination, Motion to Compel Physical Examination, Letter Requesting Examiner's Report

Interrogatories

Standard Personal Injury Interrogatories, Stipulated Protective Order, Acknowledgment of Stipulated Protective Order

Requests for Admission

Sup. Ct. Rule 201(k) Letter, Motion to Strike Objections and Deem Request to Admit Genuineness of Documents Admitted

Discovery Disputes

Motion for Rule 308 Appeal, Sup. Ct. Rule 201(k) Letter, Motion to Compel, Motion to Compel Appearance, Subpoena for Discovery of Documents, Motion to Strike Objections and Deem Request to Admit Genuineness of Documents Admitted, Request to Supplement Under Sup. Ct. Rule 213(i), Motion to Compel Medical Release, Motion to Exclude Expert, Plaintiff's Response to Defendant's Motion to Compel Examination

Settlement & ADR

Initial Letter to Defendant and Attorney's Lien Notice, Client's Settlement Acknowledgment, Joint Stipulation for Dismissal, Order for Joint Stipulation of Dismissal

Abbreviated Contents

1. Taking the Case

Initial client contact, evaluating the case, identifying and avoiding conflicts of interest and complying with other professional rules of conduct, fee arrangements, drafting the engagement contract, practice forms

2. Presuit Activities

Investigating the case, communicating with the opponent and opponent's counsel, prefiling requirements for notices and demands, dealing with insurance carriers, planning for litigation, deciding what causes of action to allege and when and where to file, conducting presuit discovery, practice forms

3. Statutes of Limitation

How to calculate the limitations period, how a claim accrues, limitations periods for particular actions, modifying the limitations period by agreement, tolls

4. Subject Matter Jurisdiction

Subject matter jurisdiction of the Circuit Court, Appellate Court, Court of Claims, Supreme Court, and federal district courts

5. Personal Jurisdiction

General jurisdiction based on domicile or residence, service of process, doing business, specific jurisdiction under the long-arm statute, forum selection clauses, challenging jurisdiction, federal due process requirements

6. Forum Selection

Bases of venue, venue statutes, venue selection, transfer from improper venue, change of venue to obtain a fair trial, forum non conveniens, removal to federal court, practice forms

7. Summons, Service of Process

Constitutional requirements of

issuance and service of process, causing summons to issue, obtaining service, alternatives to personal service, return and proof of service, challenging service, sample forms

8. Parties

Capacity and standing to sue, permissive and necessary joinder of parties, substitution of parties, interpleading competing claims to a fund, intervention by parties into a lawsuit already begun by other parties, third-party practice, naming unknown parties, effect of assignment and subrogation, naming respondents in discovery, class actions

9. Pleadings

Drafting requirements and techniques; verifications and demands for relief; rules and prayers for relief; rules and strategies for complaints, answers, counterclaims, and replies; supplemental and amended pleadings, practice forms

10. Motion Practice

Rules and techniques common to all motions; formalities of notice; requirements for written motions, oppositions, briefs, and supporting materials; procedures and tactics for the hearing on a motion; special types of motions; ex parte motions; emergency motions; disclosure motions

11. Attacking the Pleadings

Rules and techniques for challenging the complaint and other pleadings, grounds for the various devices, procedural requirements, each device compared, tactical considerations

12. Temporary Restraining Orders and Preliminary Injunctions

Grounds for TROs and PIs, procedures to obtain and oppose

TROs and PIs, dissolution, appeal, damages for wrong issuance, enforcement by contempt, specific subjects of injunction actions

13. All Discovery

Purposes and goals of discovery, governing law, scope, strategies, discovery plans, discovery sequence, deadlines, commencement and supervision of discovery, stipulations, amending and supplementing responses, practice forms

14. Privileges

Rules and techniques, attorney-client, work products, common interests, self incrimination, trade secrets, physician-patient, mental health communications, spousal communications, communications to clergy, news media sources

15. Production of Documents and Other Things

Rules and techniques applicable to requesting documents, responding to a request, producing documents, and compelling production. Discovery of medical records, public records, and computer records. Objections to production requests, stipulations, and protective orders for confidential materials. Practice forms

16. Depositions

Uses, scheduling, notices and subpoenas, preparation, conduct of examination, objections, motions

17. Physical and Mental Examinations

How to obtain physical and mental examinations, prerequisites for a court order for an examination, conduct of examinations, exchange of reports of examining physicians, sample forms

18. Interrogatories

General principles and techniques, how to propound interrogatories, how to respond

(including both answering and objecting), supplemental and amended answers, motion practice related to interrogatories, evidence issues

19. Requests for Admission

How to use, propounding, responding, drafting principles, protective orders, compelling further responses, relief from admissions and non-admissions, use of responses at trial, sanctions for failure to admit, sample forms

20. Discovery Disputes

Legal authority, available relief, motions compelling discovery, motions for protective orders, many forms

21. Summary Judgment

Advantages and disadvantages, partial summary judgments, requirements, burden of proof, evidence, motions for summary judgment, responses and replies, oral argument, post-decision motions and appeals

22. Default Judgments and Dismissals for Want of Prosecution

Nature of and grounds of judgment by default, how to obtain a default judgment, and how to vacate or set aside a default judgment. Nature, purpose, and requirements for dismissal for want of prosecution

23. Settlement and Alternative Dispute Resolution

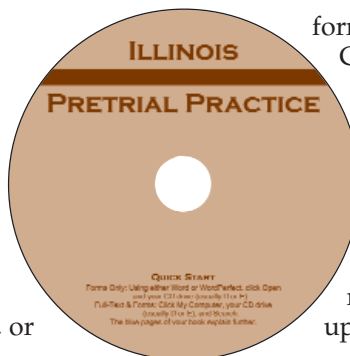
Settlement: How to evaluate a case for settlement, how to negotiate towards settlement, offers of judgment, role of courts, mechanics, enforceability

Alternative dispute resolution: Mediation and arbitration, including both court-initiated (non-voluntary) arbitration and contractual arbitration

About the Book and CD

Illinois Pretrial Practice contains 1,200 letter-sized pages in two sturdy 3-ring binders. You receive a quick-reading outline treatment of pleading, discovery, motions and more. The text is well-supported with 1,900 citations and 110 forms.

Included at no extra charge is an intuitive, full-text CD which requires no installation before use. It may be searched by key word, case name, topic, or



form. You may also open and modify any of the CD's 110 forms simply by using your favorite word processor; you need not work with the CD's search program.

\$129 buys the book and CD. The book is updated annually for \$89 with replacement pages and a new CD. Both the book and its update are sold on a 30-day trial basis, and may be returned if not to your liking. The update service may be cancelled at any time.

Yes, send me one copy of *Illinois Pretrial Practice* and its CD-ROM with an invoice for \$129 plus shipping. I may return the book within 30 days if not satisfied. Send me annual updates on the same 30-day review basis. I may cancel the update service at any time.

Copyright © 2009 James Publishing

Four Easy Ways to Order...

ILCP11i

MAIL: James Publishing, Inc. / P.O. Box 25202 / Santa Ana, CA 92799-5202 PHONE: 800-440-4780 FAX: 714-751-2709 INTERNET: www.jamespublishing.com

Prepay and save \$8.95 shipping

Check enclosed for \$129

(Make check payable to James Publishing / U.S. funds only)

Charge \$129 to my credit card: Visa Mastercard AMEX



Invoice option

(I do not wish to take advantage of the free shipping offer)

Bill firm \$137.95 (shipping included)
 Bill me the same

Card #: _____ Exp. Date: _____ 3(or4)-digit security code: _____

Please complete all blanks, providing a street address for your office.

Printed Name: _____

Firm Name: _____

Office Address: _____ Suite: _____
(not residence)

City, State, Zip: _____

Telephone: (____) _____ Fax: (____) _____

Bar #: _____ E-mail: _____

Signature: _____

Source: 7128

Answers, Tips, & Forms for Illinois Litigators

Advice from the bench, step-by-step procedures, practice proven strategies, 110 digital forms, 1,900 citations, a full-text CD, and more for only \$129

After years of careful craftsmanship by Judge Jennifer Duncan-Brice and litigators Timothy W. Kelly and Kevin G. Owens, a ground-breaking new procedure guide is ready.

Illinois Pretrial Practice delivers quick and reliable answers with its unique outline format, tight writing, superb scholarship, and extensive citations. Its practice-tested forms and pattern paragraphs speed drafting. And the accompanying full-text CD-ROM provides a second and portable reference at no extra charge.

In-depth, start-to-finish coverage

This answer book focuses on areas where questions frequently arise. Two-thirds of the book's pages address pleadings, motions, and discovery. Eight chapters are devoted to discovery issues and procedures. You will find detailed coverage of:

Jurisdiction and venue, privileges, standing and joinder, production of documents, pleadings, physical and mental exams, summons and service, interrogatories, motion practice, depositions, summary judgment, TROs and injunctions, settlement and ADR, defaults, and special proceedings.



The free CD-ROM contains the entire book text, plus 110 modifiable forms. The text is boolean searchable, and every word and citation is linked. **\$129**

Sample pages and tables of contents and forms inside...