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ILLINOIS LAW MANUAL

CHAPTER I

CIVIL PROCEDURE

F. MOTION PRACTICE

Generally, Illinois Supreme Court Rules 181 through 192 govern motion practice in Illinois.

1. Time for Pleadings and Motions

Illinois Supreme Court Rule 182, which addresses the time in which to file pleadings and motions other than those directed to the complaint, provides that:

- (a) replies to answers shall be filed within 21 days after the last day allowed for filing an answer...;
- (b) answers to and motions directed against counterclaims shall be filed by parties already before the court within 21 days after the last day allowed for the filing of the counterclaim; and
- (c) a motion attacking a pleading other than the complaint must be filed within 21 days after the last day allowed for the filing of the pleading attacked.

2. Extensions of Time

Pursuant to Illinois Supreme Court Rule 183, the court, for good cause shown, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period either before or after the expiration of the time.

3. Hearings on Motions

Pursuant to Illinois Supreme Court Rule 184, no provision in the Supreme Court Rules or in the Code of Civil Procedure (735 ILCS 5/2-101, et seq.) prescribing a period in which a motion must be filed requires that the motion be heard within that period. Certain local rules provide for the time frame that a previously filed motion must be called for hearing. For example, Cook County Local Rule 2.3 requires the movant to call a motion for hearing within 90 days of its filing. Further, either party may call up the motion for a disposition before or after the expiration of the filing date.

4. Telephone Conferences

The court may order or request a case participant, in a civil or criminal matter, to attend a proceeding by telephone or video conference. Illinois Supreme Court Rule 45. This rule does not require good cause and is intended for requests to be liberally allowed. This rule is distinguishable between Illinois Supreme Court Rule 241 which allows for a case participant to attend a civil trial or evidentiary hearing via video conference or telephone conference for good cause. Rule 241 accommodates for unexpected circumstances or illnesses where live testimony is of utmost importance, versus Rule 45 which encourages other proceedings to be done efficiently.

5. Motions for Summary Judgment

Motions for summary judgment are governed by the Illinois Code of Civil Procedure, 735 ILCS 5/2-1005.

Plaintiffs may move for summary judgment at any time after the opposing party has appeared or after the time within which the opposing party was required to appear has expired. A defendant may move for summary judgment at any time. Medrano v. Production Engineering Co.,

332 Ill. App. 3d 562 (1st Dist. 2002). In any event, the motion must be filed before the last date, if any, set by the trial court for the filing of dispositive motions. Most courts provide by local rule that these motions must be filed no later than 45 days before trial.

The parties may, if they wish, use supporting affidavits. Supreme Court Rule 191 sets out the requirement for evidentiary affidavits. See also, Preze v. Borden Chemical, Inc., 336 Ill. App. 3d 52 (1st Dist. 2002). Supporting affidavits should be made on the personal knowledge of the affiant only. The affidavit should set forth *with particularity* the facts upon which the claim, counterclaim, or defense is based. The affidavit should include sworn or certified copies of all written material upon which the affiant relies and should not consist of conclusions, but facts which would be admissible into evidence. The affidavit should also contain language that the affiant, if sworn as a witness, could testify competently to the information contained in the affidavit. Jackson v. Graham, 323 Ill. App. 3d 766 (4th Dist. 2001). The opposing party may, prior to or at the time of the hearing on the motion, file counter-affidavits.

A motion for summary judgment will be granted if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Dickson v. West Koke Mill Village Partners, 329 Ill. App. 3d 341 (4th Dist. 2002). An order granting summary judgment may be for all or any part of the relief sought. 735 ILCS 5/2-1005. Summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there remains a genuine issue as to the amount of damages. 735 ILCS 5/2-1005.

Before or after the entry of summary judgment, the court shall permit pleadings to be amended upon just and reasonable terms. 735 ILCS 5/2-1005.

6. Motions to Dismiss

a. Motions for Involuntary Dismissal

Motions for involuntary dismissal pursuant to 735 ILCS 5/2-619 are based upon certain defects or defenses. The purpose of a motion to dismiss under this statute is to provide litigants with a method of disposing of issues of law and easily proved issues of fact at the beginning of a case, reserving disputed issues of law for trial, if necessary. Van Meter v. Darien Park Dist., 207 Ill. 2d 359 (2003). A defendant may move to dismiss a complaint on a number of different grounds, including:

- (1) lack of jurisdiction;
- (2) one or both of the parties do not have legal capacity to sue or be sued;
- (3) there exists another action pending between the same parties for the same cause;
- (4) the cause of action is barred by a prior judgment;
- (5) the action was not commenced within the time prescribed by law;
- (6) plaintiff's claim has been released, satisfied of record, or discharged in bankruptcy;
- (7) the asserted claim is unenforceable under the provisions of the Statute of Frauds;
- (8) the claim asserted against the defendant is unenforceable because of his or her minority or other disability; or
- (9) the claim asserted against the defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim.

735 ILCS 5/2-619.

Motions for involuntary dismissal may be brought as a defendant's initial responsive pleading. Raising the above matters by motion does not preclude the raising of the matters later by answer unless the court has disposed of the motion on its merits. A failure to raise any of the

matters by motion does not preclude raising them by answer. If the grounds do not appear on the face of the pleading which is being attacked, the motion may be supported by affidavit.

b. Motions with Respect to Pleadings

All objections to pleadings shall be raised by motion, pointing out the specific defects contained in the complaint. These motions are governed by 735 ILCS 5/2-615. Examples of the types of defects a defendant may seek to strike from a complaint are that it is substantially insufficient in law, that immaterial matter is present in the complaint, that the allegations in the complaint are not pled with particularity, or that each cause of action is not pled under a separate count of the complaint. A motion pursuant to Section 5/2-615 may only reference deficiencies contained in the “four corners” of the complaint. Unlike motions for involuntary dismissal (735 ILCS 5/2-619) and motions for summary judgment (735 ILCS 5/2-1005), a supporting affidavit or other affirmative matter may not accompany a Section 5/2-615 motion.