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ILLINOIS LAW MANUAL

CHAPTER I
CIVIL PROCEDURE

I. TRIAL

1. Motions for Continuance

Supreme Court Rule 231 was enacted to address motions for continuance. The purpose of Supreme Court Rule 231 is to govern motions for continuance to avoid prejudice or unfairness to either party; its requirements are designed to provide an appropriate basis for exercise of the trial court's discretion. Feder v. Hiera, 85 Ill. App. 3d 1001 (1st Dist. 1980); Bullistron v. Augustana Hospital, 52 Ill. App. 3d 66 (1st Dist. 1977).

A party has no absolute right for a continuance, and the decision to grant or deny a continuance is within the sound discretion of the trial court. In Re Marriage of Ward, 282 Ill. App. 3d 423 (1st Dist. 1996); See also, People v. W.O. (In Re K.O.), 336 Ill. App. 3d 98 (1st Dist. 2002). A party seeking a continuance must provide the court with especially grave reasons for the continuance once the case has reached the trial stage because of potential inconvenience to witnesses, parties and the court. In Re Marriage of Chesrow, 255 Ill. App. 3d 613 (2nd Dist. 1994). However, a litigant must have sufficient time to prepare his case, and his right to have his day in court must be preserved. Where circumstances arise which are beyond the control of a party, and where a party has shown due diligence in moving a case forward, the role of the trial court in

considering a motion for continuance is to ensure that a litigant's right to have his day in court is preserved. Krupinski v. Denison, 9 Ill. App. 2d 155 (3rd Dist. 1956)(error for trial court to deny motion to continue trial where only a little over five months had elapsed between the time of the filing of defendant's answer and the time at which plaintiff's motion to continue trial was denied, and the matter had previously been continued only once).

As a general rule, a motion for continuance should be prepared well in advance of the trial date in the event a party is aware of circumstances warranting a continuance. The decision to grant or deny a continuance is within the sound discretion of the trial court regardless of the timeliness of the motion.

Supreme Court Rule 231 reads as follows:

> (a) If either party applies for a continuance of a cause on account of the lack of material evidence, the motion shall be supported by the affidavit of the party so applying or his authorized agent. The affidavit shall show:
>
> (1) that due diligence has been used to obtain the evidence or the want of time to obtain it;
>
> (2) of what particular fact or facts the evidence consists;
>
> (3) if the evidence consists of the testimony of a witness, his place of residence, or if his place of residence is not known, that due diligence has been used to ascertain it; and
>
> (4) that if further time is given the evidence can be procured.
>
> (b) If the court is satisfied that the evidence would not be material or if the other party will admit the affidavit into evidence as proof only of what the absent witness would testify to if present, the continuance shall be denied unless the court, for the furtherance of justice, shall consider a continuance necessary.
>
> (c) It is sufficient cause for the continuance of any action:
>
> (1) that, in time of war or insurrection, a party whose presence is necessary for the full and fair prosecution or defense of the action is in the military service of the United States or of [this state] and that his military service materially impairs his ability to prosecute or defend the action; or

(2) that the party applying therefor or his attorney is a member of either house of the General Assembly during the time the General Assembly is in session, if the presence of that party is necessary for the full and fair trial of the action, and in the case of the attorney, if the attorney was retained by the party prior to the time the cause was set for trial.

(d) No amendment is cause for continuance unless the party affected thereby, or his agent or attorney, shall make affidavit that in consequence thereof, he is unprepared to proceed to or with the trial. If the cause thereof is the want of material evidence, a continuance shall be granted only on a further showing as may be required for continuance for that cause.

(e) The court may on its own motion, or with the consent of the adverse party, continue a cause for trial to a later day.

(f) No motion for the continuance of a cause made after the cause has been reached for trial shall be heard unless a sufficient excuse is shown for the delay.

(g) When a continuance is granted upon payment of costs, the costs may be taxed similarly by the court, and on being taxed shall be paid on demand of the party, his agent or his attorney and, if not so paid, on affidavit of that fact, the continuance may be vacated, or the court may enforce the payment, with the accruing costs, and contempt proceedings.

The decisive fact in determining the propriety of a trial court's exercise of discretion in ruling on a motion for a continuance for lack of material evidence is whether the party seeking the continuance has demonstrated lack of due diligence in proceeding with the case. In Re Marriage of Chesrow, 255 Ill. App. 3d 613 (2nd Dist. 1994). Due diligence depends upon the particular facts of each case. Cole v. Choteau, 18 Ill. 439 (1857).

When either the unavailability of a party or any other witness is at issue, a Supreme Court Rule 231 affidavit must indicate that the unavailable individual's testimony at trial would be material and, further, that due diligence was used to obtain the unavailable individual's testimony at trial. In considering a motion to continue trial based on the unavailability of a party or witness, the trial judge will first determine if the testimony would be material and, secondly, whether the

party moving for continuance exercised due diligence to obtain the testimony for trial. Again the decision to grant or deny the continuance is in the sole discretion of the trial judge.

In the case of Palmer v. Miller, 323 Ill. App. 528 (4th Dist. 1944), the court denied defendant's motion for a continuance since the absence of a material witness at trial was due to the lack of due diligence by the defense counsel. The court reasoned that defense counsel knew long before the trial date that the witness was outside of the court's jurisdiction, and further, defense counsel made no attempt to take the deposition of the witness until just before the trial date. Id. Similarly, in Washington v. Chicago Transit Authority, et al., 179 Ill. App. 3d 113 (1st Dist. 1989), it was not considered error for the trial court to proceed with trial where the defendant bus driver was unavailable for trial and the only reason given by defense counsel was an oral representation that the defendant bus driver was attending a funeral out of town.

At times near or on the trial date, a party or an attorney may request a continuance due to illness. To warrant a continuance based upon the party's illness, that illness must be verified by competent medical testimony stating the nature of the illness and reasons why the party is unable to attend or participate in a trial. In Re Marriage of Ward, 282 Ill. App. 3d 423 (1st Dist. 1996). A trial attorney's illness may be sufficient grounds for temporary postponement of a trial even if the case has been set for trial. Id. It appears that competent medical testimony is not required to verify an attorney's illness. Again, whether the sickness of a party or trial attorney is grounds for a continuance is within the trial judge's discretion.

Whether a continuance is warranted where the trial attorney was in need of additional time for trial preparation also rests within the trial court's discretion. In Re Tally, 215 Ill. App. 3d 385 (4th Dist. 1991). Generally, trial judges do not look favorably upon trial attorneys indicating on or near the trial date that they are simply not prepared to proceed to trial.

In the past, Supreme Court Rule 231 has been used as a tool to continue a trial when the trial attorney is engaged in another trial. An attorney engaged in another trial or hearing may not receive a continuance as a matter of right. However, the fact that counsel is engaged in another trial is given considerable weight. Teitelbaum v. Reliable Welding Co., 106 Ill. App. 3d 651 (2nd Dist. 1982). Furthermore, a continuance should only be for the duration of the particular trial or hearing in which the attorney was engaged. Id. In accordance with Rule 5.2(a) of the Rules of the Circuit Court of Cook County, a party shall be entitled to a continuance on the ground that his attorney (who filed his trial appearance at the pretrial conference) is actually engaged in another trial or hearing, but only for the duration of the particular trial or hearing in which the attorney is then engaged. No trial will be continued a second time upon a motion of the same party on the ground of a prior engagement of his attorney. In accordance with this rule, an attorney can only continue a trial once due to his or her engagement in another trial. Pursuant to Supreme Court Rule 231, the court has discretion to assess costs against a party requesting a continuance. This rule does not require the court to tax the costs at the time the continuance is granted. Chase v. Baldassano, 111 Ill. App. 2d 266 (1969). Payment of costs does not extend to the payment of attorney's fees. Chicago Title & Trust Company v. Brooklyn Bagel Boys, Inc., 222 Ill. App. 3d 413 (1991).

2. Order of Proceeding

In accordance with Supreme Court Rule 233, there is an order in which the parties shall proceed at all stages of trial.

Supreme Court Rule 233 states as follows:

> The parties shall proceed at all stages of trial, including the selection of prospective jurors as specified in Rule 234, opening and closing statements, the offering of evidence, and the examination of witnesses, in the order in which they appear in the pleadings unless otherwise agreed by the parties

> or ordered by the court. In consolidated cases, third-party proceedings, and all other cases not otherwise provided for, the court shall designate the order.

In addition to ruling upon the admissibility of evidence, the trial judge controls the order of proceedings. For example, the trial judge has discretion to determine the amount of time allotted each party for opening statements and closing arguments. See also, J. L. Simmons Co. v. Firestone Tire & Rubber Co., 126 Ill. App. 3d 859 (3rd Dist. 1984), aff'd 108 Ill. 2d 106 (1985). In addition, the trial court also has discretion to determine whether the plaintiff will be allowed to present rebuttal testimony at the conclusion of the defendant's case in chief. Gabrenas v. R. D. Werner Co. Inc., 116 Ill. App. 3d 276 (4th Dist. 1983).

3. Voir Dire

Pursuant to Supreme Court Rule 234, the court will conduct voir dire examination of prospective jurors.

Supreme Court Rule 234 states as follows:

> The court shall conduct the *voir dire* examination of the prospective jurors by putting to them questions it thinks appropriate touching upon their qualification to serve as jurors in the case on trial. The court may permit the parties to submit additional questions to it for further inquiry if it thinks they are appropriate, and shall permit the parties to supplement the examination by such direct inquiry as the court deems proper for a reasonable period of time depending upon the length of the examination by the court, the complexity of the case and the nature and extent of the damages. Questions shall not directly or indirectly concern matters of law or instructions. The court shall acquaint prospective jurors with general duties and responsibilities of the jurors.

In 1997, the Illinois legislature amended Supreme Court Rule 234 to state that the court "*shall* permit" rather than "*may* permit" the parties to supplement the court's examination by counsel's direct inquiry as the court deems proper. However, the court still has discretion to determine the amount of time for the parties' direct inquiry. Factors the trial judge considers in determining the time reasonable for the parties' direct inquiry are:

- the length of the examination by the court;
- the complexity of the case; and,
- the nature and extent of the damages.

The court may primarily question the prospective jurors or simply allow the parties to ask all of the questions during voir dire. Grossman v. Gebarowski, 315 Ill. App. 3d 213 (1st Dist. 2000). Voir dire serves dual purpose of enabling trial court to select jurors who are free from bias and prejudice and of ensuring that counsel have an informed and intelligent basis on which to exercise their peremptory challenge. People v. Wilson, 303 Ill. App. 3d 1035 (1st Dist. 1999).

It may be serious error for the trial court to fail to stop voir dire which becomes an attempt to indoctrinate or pre-educate jurors, to obtain pledges as to how they would decide under a given set of facts, or to determine which party they would favor. Gowler v. Ferrell-Ross Co., 206 Ill. App. 3d 194 (1st Dist. 1990). A trial judge may not prohibit all direct questioning but may block questions in an area that is adequately covered even if put directly to jurors. People v. Green, 30 Ill. App. 3d 1000 (1st Dist. 1975). However, limitation of voir dire questioning by the court may constitute reversible error where such limitation denies a party a fair opportunity to probe an important area of potential bias or prejudice amongst prospective jurors. People v. Gregg, 315 Ill. App. 3d 59 (1st Dist. 2000).

After questioning of the jurors both by the court and the parties, the judge will then allow the parties to exercise preemptory challenges, or to make motions to excuse a juror for cause. In terms of preemptory challenges, a party is allowed to excuse a juror without cause. The court will indicate, prior to jury selection, the amount of preemptory challenges afforded each party. The court may grant a motion for cause if a juror is found unable to be fair to both parties, listen to the evidence with an open mind, and apply the law given by the court to the evidence. Again, the trial court has discretion to determine whether a juror should be excused upon a motion for cause.

Generally, at the beginning of the trial, the court will admonish the jurors that they should not talk to the attorneys or the parties during the course of the trial. In addition, the court will instruct the jurors not to begin to deliberate before they have heard all of the evidence.

4. Opening Statements

Pursuant to Supreme Court Rule 235, after a jury is impaneled, the attorneys have an opportunity to make an opening statement.

Supreme Court Rule 235 is as follows:

> As soon as the jury is empaneled, the attorney for the plaintiff may make an opening statement. The attorney for the defendant may immediately follow with an opening statement. An opening statement may not be made at any other time, except in the discretion of the trial court.

Parties have the right to make opening statements and closing arguments; this decision is not left to the trial judge's discretion. People v. DeRossett, 237 Ill. App. 3d 315 (4th Dist. 1992).

5. Admission of Business Records into Evidence

Pursuant to Supreme Court Rule 236, business records are admitted into evidence with the proper foundation.

Supreme Court Rule 236 is as follows:

> (a) Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, is admissible as evidence of the act, transaction, occurrence or event, if made in the regular course of any business, and if it was the regular course of the business to make such a memorandum or record at the time of such an act, transaction, occurrence or event or within a reasonable time thereafter. All other circumstances of the making of the writing or record including lack of personal knowledge by the entrant or maker of the record may be shown to affect its weight, but shall not affect its admissibility. The term "business" as used in this rule, includes business, profession, occupation, and calling of every kind.

(b) Although police accident reports may otherwise be admissible in evidence under the law, subsection (a) does not allow such writings to be admitted as a record or memorandum made in the regular course of business.

To admit medical records under Supreme Court Rule 236, a party must establish the foundation through the records custodian or someone who is familiar with the business's regular method of documenting the item. Departmental Corrections ex. rel State v. Adams, 278 Ill. App. 3d 803 (4th Dist. 1996). The party attempting to admit the medical records must establish:

(1) that the witness is familiar with the business, its method of operation, and manner in which the record was prepared (Bachman v. General Motors Corp., 332 Ill. App. 3d 760 (4th Dist. 2002));

(2) that the business requires accurate records made in a timely fashion within a reasonable time following the event (Kern v. Rafferty, 131 Ill. App. 3d 728 (5th Dist. 1985)); and

(3) that the record was kept in the normal course of business. (Tie Systems, Inc. v. Telcom Midwest, Inc., 203 Ill. App. 3d 142 (1st Dist. 1990)).

The problem that has arisen with admission of medical records and reports pursuant to Supreme Court Rule 236 is allowing these records and reports to be published to a jury without live medical testimony. In Birch v. Drummer, 139 Ill. App. 3d 397 (4th Dist. 1985), the court ruled that the business record exception to the hearsay rule does not bar admission of business records because they contain opinions. Rather, the fact that records contained opinions constitutes one of the circumstances which affects only the weight of the evidence. Therefore, the court can potentially allow medical records and reports containing the doctor's opinions to be published to the jury. This would eliminate the plaintiff's need to call the treating physician as a witness at the time of trial. Once the records and reports have been admitted into evidence, the court has discretion to determine which exhibits should be published to the jury.

In the matter of Kelly v. HCI Heinz Construction Company, 282 Ill. App. 3d 36 (4th Dist. 1996), the court held that the trial court could properly have concluded that opinions of examining

physicians were important enough that they should be presented by live testimony rather than in the form of medical records, and thus properly excluded those medical records in a lawsuit under the, now repealed, Structural Work Act, where a bricklayer alleged injuries when scaffolding on which he was working collapsed. However, in Troyan v. Reyes, 367 Ill. App. 3d 729 (3rd Dist. 2006), the court found that medical records containing the opinions and diagnoses of a physician are admissible under the business record exception when the records are easily readable and not too complex for the jury to understand on its own. See also, Werner v. Nebal, 377 Ill. App. 3d (1st Dist. 2007).

Tangible printouts of computer-stored data are admissible under the business exception to the hearsay role if:

(1) electronic computing equipment is recognized as standard;

(2) the input is entered in the regular course of business reasonably close in time to the happening of the event recorded; and

(3) the foundation establishes that this source of information, method and time of preparation indicates its trustworthiness and justify its admission.

In re Marriage of DeLarco, 313 Ill. App. 3d 107 (2nd Dist. 2000).

Supreme Court Rule 236 may be used to introduce into evidence employment records. Again, the proper foundation must be laid. Once these records are admitted into evidence, they may be used for impeachment of a claim for lost wages.

6. Compelling Appearance of a Witness at Trial

Supreme Court Rule 237 addresses compelling appearances of witnesses at trial.

Supreme Court Rule 237 is as follows:

(a) Service of Subpoenas. Any witness shall respond to any lawful subpoena of which he or she has actual knowledge, if payment of the fee and mileage has been tendered. Service of a subpoena by mail may be proved *prima facie* by a

return receipt showing delivery to the witness or his authorized agent by certified or registered mail at least seven days before the date on which appearance is required and an affidavit showing that the mailing was prepaid and was addressed to the witness, restricted delivery, with a check or money order for the fee and mileage enclosed.

(b) Notice of Parties et al. The appearance at a trial of a party or a person who at the time of the trial is an officer, director, or employee of a party may be required by serving the party with a notice designating the person who is required to appear. The notice also may require the production at trial or other evidentiary hearing of the original of those documents or tangible things previously produced during discovery. If the party or person is a nonresident of the county, the court may order any terms and conditions in connection with his or her appearance at the trial that are just, including payment of his reasonable expenses. Upon a failure to comply with the notice, the court may enter any sanction on remedy provided for in Rule 219(c) that may be appropriate.

Supreme Court Rule 237 governs production at trial of documents or tangible things and is not a general discovery rule, but is designed to compel parties to produce documents or tangible things at trial. Bearden v. Hamby, 240 Ill. App. 3d 779 (1st Dist. 1992). Compelling the appearance of a party litigant at trial is a matter within the sound discretion of the trial court, and not a mandatory requirement. O'Brien v. Walker, 49 Ill. App. 3d 940 (1st Dist. 1977). The remedy for noncompliance with Supreme Court Rule 237, which governs production of documents, is within the sound discretion of the trial court. Gov't Emples. Ins. Co. v. Campbell, 781 N.E.2d 639 (1st Dist. 2002).

One use of Supreme Court Rule 237 is to substantiate a wage loss claim by requesting tax returns at the time of trial. In Polk v. Cao, 279 Ill. App. 3d 101 (1st Dist. 1996), the trial court did not abuse its discretion in imposing a discovery sanction which barred plaintiff's wage loss claim. The plaintiff failed to use reasonable effort to obtain his tax returns for production at trial as requested in defendant's Supreme Court Rule 237 motion, even though the plaintiff produced W-2 forms for each year where the defendant requested plaintiff's tax returns almost three years before

the trial. However, plaintiff's counsel did not begin looking for the tax returns until one month before the trial. Id.

7. Impeachment of Witnesses

Supreme Court Rule 238 addresses impeachment of a witness and hostile witnesses.

Supreme Court Rule 238 is as follows:

(a) The credibility of a witness may be attacked by any party including the party calling the witness.

(b) If the court determines that a witness is hostile or unwilling, the witness may be examined by the party calling him as if under cross examination.

There is one jury instruction contained within the Illinois Pattern Jury Instructions which relates to credibility.

IPI 1.01[4] (Preliminary Cautionary Instructions) is as follows:

> You are the only judges of the credibility of the witnesses. You will decide the weight to be given to the testimony of each of them. In evaluating the credibility of a witness, you may consider that witness's ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case.

Credibility of the parties, fact witnesses, and opinion witnesses (treating physician, medical experts, and liability experts) may be the key to defending a matter at trial. Supreme Court Rule 238 allows an attorney to attack the credibility of a witness by impeaching the witness with evidence of prior and inconsistent statements. Some sources of prior statements useful in the impeachment of witnesses consist of deposition transcripts, records (medical records), and testimony of a police officer as to the contents of his police report.

Whether evidence of a previous conviction may be admitted in evidence for impeachment purposes is a question that lies within the trial court's discretion. People v. Davis, 344 Ill. App. 3d

400 (4th Dist. 2003). The admission of a prior conviction to impeach the credibility of a witness is governed by the test established in People v. Montgomery, 47 Ill. 2d 510 (1971). Under the Montgomery test, evidence of a prior conviction is admissible for impeachment if:

> (1) the crime was punishable by death or imprisonment in excess of one year, or involved dishonesty or a false statement regardless of the punishment;
>
> (2) less than 10 years have passed since the date of the conviction or release of the witness from confinement, which ever is later; and
>
> (3) the probative value of admitting the prior conviction overweighs the danger of unfair prejudice.

See also People v. Davis, 344 Ill. App. 3d 400 (4th Dist., 2003); People v. Calderon, 859 N.E.2d 1163 (2nd Dist. 2006).

Where a witness's prior conviction meets one of the first two requirements of the rule governing use of prior convictions for impeachment, the judge must then conduct meaningful tests to determine whether the prejudicial effect of the admission of conviction substantially outweighs its probative value. Convictions involving deceit, fraud, cheating, or stealing are the kind of crimes "that press heavily on the probative side of the scale." Stokes v. City of Chicago, 333 Ill. App. 3d 272 (1st Dist. 2002). The record must show that the trial court understood and used its discretion and considered factors on both sides of the scale. Torres v. Irving Press, Inc., 303 Ill. App. 3d 151 (1st Dist. 1999).

8. Jury Instructions

Supreme Court Rule 239 addresses jury instructions. Supreme Court Rule 239 is as follows:

> (a) **Use of I.P.I. Instructions; Requirements of Other Instructions.** Whenever Illinois Pattern Jury Instructions (I.P.I.) contains an instruction applicable in the civil case, giving due consideration to the facts and the prevailing law the court determines that the jury should be instructed on the subject, the I.P.I.

instructions shall be used, unless the court determines it does not accurately state the law. Whenever I.P.I. does not contain an instruction on a subject on which the court determines that the jury should be instructed, the instruction given in the subject should be simple, brief, impartial, and free from argument.

(b) **Court's Instructions**. At any time before or during the trial, the court may direct counsel to prepare designated instructions. Counsel shall comply with the direction, and copies of instructions so prepared shall be marked "COURT'S INSTRUCTION." Counsel may object at the conference on instructions to any instruction prepared at the court's discretion, regardless of who prepared it, and the court shall rule on these objections as well as the objections of other instructions. The grounds of objections shall be particularly specified.

(c) **Procedure.** Each instruction shall be accompanied by a copy, and the copy shall be delivered to the opposing counsel. In addition to the numbering of copies and indicating who tendered them as required by Sec. 2-1107 of the Code of Civil Procedure. All objections made at the conference and rulings thereon shall be shown in the report of proceedings. The original instructions given by the court to the jury shall be taken by the jury to the jury room.

(d) **Instructions Before Opening Statements**. After the jury is selected and before the opening statements, the court may orally instruct the jury as follows:

i. On cautionary or preliminary matters, including, but not limited to, the burden of proof, the believability of witnesses, the receipt of evidence for the limited purpose. The court may not read these instructions after closing arguments.

ii. On the issue of substantive law applicable to the case, including but not limited to, the elements of claim of affirmative defense. The court shall read these instructions after closing arguments.

(e) **Instructions During Trial**. Nothing in this rule is intended to restrict the court's authority to give any appropriate instruction during the course of trial.

Where a pattern jury instruction is adequate to charge the jury, the use of a nonpattern jury instruction is considered improper. Preston v. Simmons, 321 Ill. App. 3d 789 (1st Dist. 2001). Jury instructions should be sufficiently clear to avoid misleading jurors and should fairly and correctly state the law. Magna Trust Co. v. Illinois Cent. R. Co., 313 Ill. App. 3d 375 (5th Dist. 2000). The trial court has considerable discretion in determining the form in which the jury

instructions should be given. Baier v. Bostitch, 243 Ill. App. 3d 195 (1st Dist. 1993). "The purpose of instructions is to convey to the jurors the correct principles of law applicable to the evidence submitted to them." Augensten v. Pulley, 191 Ill. App. 3d 664 (1989). Illinois Pattern Jury Instructions were devised to induce use of instructions free of argumentative language. Ibe v. Lee, 264 Ill. App. 3d 800 (1993).

9. Directed Verdict

Supreme Court Rule 240 addresses directed verdicts. Supreme Court Rule 240 is as follows:

> The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

Section 735 ILCS 5/2-1202 of the Illinois Code of Civil Procedure addresses reserved ruling on motion for directed verdict - post trial motions in jury cases. Section 735 ILCS 5/2-1202 is as follows:

> **Reserved ruling on a motion for directed verdict – post-trial motion in jury cases.**
>
> (a) If at the close of the evidence, before the case is submitted to jury, any party moves for a directed verdict, the court may (1) grant the motion or (2) deny the motion or reserve its ruling thereupon and submit the case to jury. If the court denies the motion or reserves its ruling thereon, the motion is waived unless the request is renewed in the post-trial motion.
>
> (b) Relief desired after trial in jury cases, herefore sought by reserve motion for directed verdict or motion for judgment notwithstanding the verdict, an arrest of judgment or for a new trial must be sought in a single post-trial motion. Relief after trial may include the entry of judgment if under the evidence in the case it would have been the duty of the court to direct a verdict without submitting a case to jury, even though no motion for directed verdict was made or if made was denied or ruling thereupon reserved. The post-trial motion must contain the points relied upon, particularly specifying the grounds and support thereof, and must state the relief desired, as for example, the entry of judgment, the granting of a new trial or the appropriate relief. Relief sought in post-trial motions may be in the alternative or may be consolidated upon the denial of other relief asked if the preference

thereto, as for example a new trial may be requested in the event a request for judgment is denied.

(c) Post-trial motions must follow within thirty days after entry of judgment or the discharge of the jury, if no verdict is reached, or within any further time the court may allow within the thirty days or any extension thereof. A party against whom judgment is entered pursuant to posttrial motion shall have like time after the entry of judgment within which to file a post-trial motion.

(d) A post-trial motion filed in apt times stays enforcement of the judgment.

(e) Any party who fails to seek a new trial in his or her post-trial motion, either conditionally or unconditionally, as herein provided, waives the right to apply for a new trial, except in cases in which the jury has failed to reach a verdict.

(f) The court must rule upon all relief sought in any post-trial motions. Although the ruling of a portion of the relief sought renders unnecessary a ruling on other relief sought for purposes of further proceedings in a trial court, the court must nevertheless rule conditionally on the other relief sought by determining whether it should be granted if the unconditional rulings are thereafter reserved, set aside, or vacated. The conditional rulings become effective in the event the unconditional rulings are reserved, set aside, or vacated.

A motion for directed verdict should be granted only when all of the evidence, when viewed in light most favorable to the non-movant, so overwhelmingly favors the movant that no contrary verdict based on the evidence could ever stand. Buckholtz v. MacNeal Hosp., 337 Ill. App. 3d 163 (1st Dist. 2003). In deciding a motion for directed verdict, the trial court must consider whether, in viewing the evidence most favorable to the plaintiff, there is a total lack of evidence to prove any necessary element of the plaintiff's case. Century National Ins. Co. v. Tracey, 316 Ill. App. 3d 639 (2nd Dist. 2000). Other than a party's motion for directed verdict, the trial court has authority to direct verdicts on damages on its own motion when warranted under the evidence. Baker v. Hutson, 333 Ill. App. 3d 486 (5th Dist. 2002).

In personal injury lawsuits, the typical post-trial motion is based upon an inconsistent verdict, in that the jury awarded medical expenses but refused to award any damages for pain and suffering. In Orava v. Plunkett Furniture Co., 297 Ill. App. 3d 635 (2nd Dist. 1998), the court

determined that there was no inherent consistency between a jury awarding an injured motorist medical expenses and refusing to award pain and suffering, and therefore, the plaintiff was not entitled to a new trial on the issue of damages. The plaintiff suffered little, if any, pain at the time of the automobile accident. The plaintiff's treating physicians found no objective signs of injuries that correlated with her various complaints of pain. The accident did no more than cause a short term cervical strain, which necessitated emergency treatment and resolved itself within two months of the accident. Id.

10. Entry of Judgment

Supreme Court Rule 272 addresses when judgment is entered. Supreme Court Rule 272 is as follows:

> If at the time of announcing final judgment the judge requires a submission of a form of written judgment to be signed by the judge or if the circuit court rule requires a prevailing party to submit a draft order, the clerk shall make a notation to that effect and the judgment becomes final only when the signed judgment is filed. If no such signed written judgment is to be filed, the judge or clerk shall forthwith make a notation of judgment and enter the judgment of record promptly, and the judgment is entered at the time it is entered of record.

If judgment is required to be submitted in the form of a written judgment, then a judgment becomes final only when the signed judgment is filed, or where no such signed written judgment is to be filed, then judgment is entered at the time judgment is entered of record. Canfield v. Delheimer, 210 Ill. App. 3d 1055 (2nd Dist. 1991).