



**ILLINOIS CREDITORS BAR ASSOCIATION
CO-HOSTED WITH
NORTH SUBURBAN BAR ASSOCIATION**

**SPRING 2021
VIRTUAL SEMINAR:
DISSECTING CREDITORS'
BEST PRACTICES**

MONDAY, FEBRUARY 15, 2021

8:45 AM - 4:15 PM

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AGENDA



8:45- 9:00 a.m.	Welcome
9:00 - 10:00 a.m.	Session One Bankruptcy Practice Remotely & Non-Dischargeable Debt <i>Paul M. Bach, J.D./CPA, Bach Law Offices, Inc (NSBA Member)</i>
10:00 - 10:15 a.m.	Break
10:15 – 11:15 a.m.	Session Two Remote Depositions and Citation Examinations <i>S. Ross Suter, J.D., VP Litigation Solutions, Magna Legal Services</i> <i>Dr. Daniel Wolfe, J.D., Ph.D., Senior Director of Jury Consulting, Magna Legal Services</i>
11:15 – 11:30 a.m.	Break
11:30 – 12:30 p.m.	Session Three Foreclosure Rules <i>The Hon. Joel Chupack, Circuit Judge of the Circuit Court of Cook County, Mortgage and Foreclosure/Mechanics Lien Section (NSBA Member)</i> <i>Robert Rappe, Vice President and Managing Foreclosure Attorney, Cordilis & Associates, P.C.</i>
12:30 – 1:00 p.m.	Lunch Break
1:00– 2:00 p.m.	Session Four Ethical Considerations During the Covid-19 Pandemic <i>Rory P. Quinn, J.D., Litigation Counsel at the Illinois Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC)</i>
2:00 – 2:15 p.m.	Break
2:15– 3:15 p.m.	Session Five Landlord-Tenant Rights: Eviction Procedures <i>The Hon. Michael B. Betar, Associate Judge, Nineteenth Judicial Circuit</i> <i>The Hon. James A. Wright, Associate Judge, Municipal Department, District 1 - Forcible Entry and Detainer Section</i> <i>Robert Kahn, Partner, Sanford Kahn, LLP (ILCBA Member)</i>
3:15 – 3:30 p.m.	Break
2:15 – 3:15 p.m.	Session Six Coming Attractions: Changes to the Room 1401 Standing Order on the Horizon <i>The Hon. James E. Hanlon, Jr., Associate Judge, Municipal Department, District 1</i>

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SPEAKER BIOS

Paul M. Bach, J.D./CPA, Bach Law Offices, Inc



Paul M. Bach, Northbrook, Illinois. Shareholder of Bach Law Offices, Inc. B.S. Bradley University; J.D. Drake University; Admitted to Bar 1992; and also holds CPA designation. Practice includes Bankruptcy (7, 11 and 13), Adversary matters and Federal Litigation including FDCPA, FCRA, TILA and RESPA matters and complex matters including Chapter 11 and real estate issues. Certified Football Official and member of the Illinois High School Association; Also Registered Baseball & Softball Official. Resides in Northbrook with spouse and partner, Penelope N. Bach with two adult children.

S. Ross Suter, J.D., VP Litigation Solutions, Magna Legal Service

S. Ross Suter is a Vice President of Litigation Solutions and the General Counsel of Magna Legal Services. Ross is a resident of the firm's Philadelphia and New York offices. After practicing as a litigator in Philadelphia, Pennsylvania for several years, he turned his attention to litigation consulting services where he has been involved in the development of graphic and trial presentation strategies in hundreds of cases. His work includes partnering with members of the trial team to develop themes and case strategies that persuade juries, judges and arbitration panels.

Mr. Suter received his Juris Doctorate from Widener University School of Law, a Master of Science from Villanova University and a Bachelor of Arts from McDaniel College. He is a member of the Pennsylvania and New Jersey State Bars.



SPEAKER BIOS

Dr. Daniel Wolfe, J.D., Ph.D., Senior Director of Jury Consulting, Magna Legal Services



Dr. Daniel Wolfe is Senior Director of Jury Consulting at Magna Legal Services, a full-service litigation consulting and strategic communications firm with offices in Chicago, Delaware, Ft. Lauderdale, Houston, Las Vegas, Los Angeles, New Jersey, New Orleans, New York, Philadelphia, San Francisco, Tampa, and Boston, Washington DC.

Dr. Wolfe provides research-based and experiential data analysis to trial team nationwide and oversees the standards in practice of the jury consulting team nationally.

Dr. Wolfe received his J.D., his Ph.D. in law and psychology, and his M.A. in psychology from the University of Nebraska. He holds his B.A. in psychology and sociology from Colorado State University.

The Hon. Joel Chupack, Circuit Judge of the Circuit Court of Cook County, Mortgage and Foreclosure/Mechanics Lien Section

Hon. Joel Chupack was elected Judge in Cook County's 12th Judicial Subcircuit in 2018. Prior to his election, he was in private practice for 30 years handling mostly commercial and real estate litigation matters. He was also an Arbitrator for over 20 years sitting on the Commercial Panel of the American Arbitration Association, where he handled a wide variety of cases seeking both equitable relief and monetary damages, ranging from nominal amounts to multi-million dollars.

Judge Chupack currently presides over the call for Calendar 57 in the Mechanics' Lien/Mortgage Foreclosure Section of the Chancery Division. Prior to April of 2020, he was assigned to the Eviction Division of the 1st Municipal District. While presiding there, he rewrote the judicial bench book for evictions.



Judge Chupack is the current Chair of the Chicago Bar Association Real Property Law Committee. He is the current Vice-Chair of the ISBA Unauthorized Practice of Law Task Force and an ISBA Assembly Member. He is the former Chair of the ISBA Real Estate Law Section Council, was a contributing editor to its Disaster Legal Services Manual, and a panelist on several of its public interest programs. Judge Chupack is a former President of The Decalogue Society of Lawyers and a board member of The Decalogue Foundation. Judge Chupack has authored numerous articles and has presented at seminars on various civil procedure and real estate topics. Off the bench, Judge Chupack remains involved in various community groups.

SPEAKER BIOS

Robert Rappe, Vice President and Managing Foreclosure Attorney, Cordilis & Associates, P.C.



Robert H. Rappe, Jr. is a Vice President and Managing Attorney with Codilis & Associates, P.C. and practices in the areas of real estate transactions, foreclosures, creditor's rights and related litigation. He is a graduate of DePaul University (B.A. 1986) and DePaul College of Law (J.D. 1989), and is licensed to practice in the State of Illinois, and in Federal Court in the Northern, Central and Southern Districts of Illinois. He was a chair certified arbitrator in the DuPage County Mandatory Arbitration Program.

He is a member of the Illinois State Bar Association, DuPage County Bar Association, and the Mortgage Banker's Association of America. He has been a speaker at various seminars on real estate, foreclosure and mortgage banking issues. He is the author or co-author of numerous articles and publications concerning the real estate and mortgage banking industries.

Rory P. Quinn, J.D., Litigation Counsel at the Illinois Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC)

Rory P. Quinn is Litigation Counsel at the Illinois Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC), where he investigates and prosecutes allegations of lawyer misconduct.

He received his undergraduate degree from Western Illinois University, his law degree from Chicago-Kent College of Law. Prior to joining the ARDC, Rory worked as an associate for Swanson Martin & Bell in Chicago and as a Cook County Assistant State's Attorney.



SPEAKER BIOS

The Hon. Michael B. Betar, Associate Judge, Nineteenth Judicial Circuit



Judge Michael Betar was appointed as an Associate Judge to the Nineteenth Judicial Circuit (Lake County) in February, 2008, after 16 years in private practice concentrating in collections and civil litigation.

He was assigned to the Post-Judgment Collection and Forcible Entry and Detainer call in C-307 from November, 2012 through July, 2014; January, 2016 through June, 2016; and from July, 2018 through the present.

The Hon. James A. Wright, Associate Judge, Municipal Department, District 1 - Forcible Entry and Detainer Section

Judge James A. Wright has served as an Associate Judge on the Circuit Court of Cook County since July!, 2018, and is currently assigned to the First Municipal District where he hears eviction cases primarily, but also post-judgment civil cases and small claims cases.

Prior to being appointed to the bench, Judge Wright served as Of Counsel with the law firm Chico & Nunes, P .C., where he practiced in arears involving Minority and Women-Owned Businesses, Disadvantaged Businesses Enterprises, and Small Business Enterprises, among other qualified business organizations subject to federal, State, County, and other government municipalities rules, regulations, and guidelines.



SPEAKER BIOS

Robert Kahn, Partner, Sanford Kahn, LLP

Robert Kahn graduated from Bradley University in 1995, earned his law degree from Chicago-Kent College of Law in 1999, and has practiced law since 1999. He is a member of the Chicago Bar Association and is a Partner at Sanford Kahn, LLP.

Robert co-wrote the Bench Book used by the Judges in eviction court and, in 2018, Robert was chosen to author the Illinois Institute for Continuing Legal Education ("IICLE") chapter relating to evictions.

Robert tries cases on a daily basis, has won numerous jury trials, and appears in bankruptcy court whenever tenants file bankruptcy.

Robert frequently defends landlords in fair housing lawsuits, advises several housing cooperatives, and regularly gives lectures regarding landlord-tenant law, fair housing, and the Chicago Residential Landlord and Tenant Ordinance ("RLTO"). Robert also trains landlords regarding crime-free ordinances and common eviction pitfalls on behalf of the Alsip police department.



The Hon. James E. Hanlon, Jr., Associate Judge, Municipal Department, District 1



Jim Hanlon was sworn in as an Associate Judge on June 29, 2018. He is currently assigned in the First Municipal District, Room 1401 (Post-Judgment Remedies). Immediately prior to joining the bench, Jim served as the Acting Bureau Chief of the Civil Actions Bureau of the Cook County State's Attorney's Office, having also served as the Chief of the Special Litigation Division of that Office. Jim's practice prior to that was as a commercial litigator with significant experience in financial services litigation, antitrust, and corporate control matters. Jim served as Director of Client Services for Novus Law, LLC, a professional services firm serving corporate legal departments. Jim was a member of the Litigation Department and an Equity Partner at Katten Muchin Rosenman LLP (1984-2002) and at Howrey LLP (2002-2008).

Jim is a member and active in the Chicago Bar Association (serving as the Co-Chair of the Commercial Litigation Committee for 2019-20), Women's Bar Association, Chicago Council of Lawyers, and North Suburban Bar Association.

Jim graduated from DePaul University College of Law, J.D. with Honors, in 1984, where he was a member of the Law Review. Jim obtained his undergraduate degree in Finance from DePaul University in 1981.

Bankruptcy Practice Remotely & Non- Dischargeable Debt

Paul M. Bach

Bach Law Offices, Inc.

VIRTUAL MEETINGS AND DISCHARGEABILITY, OBJECTIONS TO DISCHARGE AND MOTION TO DISMISS FOR ABUSE BASED ON TOTALITY OF THE CIRCUMSTANCES

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VIRTUAL MEETINGS COURT APPEARANCES AND TRIALS– BEST PRACTICES¹

I. Attorney/Client Meetings and Consultations

- a. Be sure that you are in an area that is quiet enough for your microphone not to pick up stray conversations, pets, children etc.
- b. Be patient and speak slowly and identify yourself when speaking. The opportunity for misunderstandings is greater virtually so stay alert at all times.
- c. If “meeting” virtually remember you must be patient and not interrupt if at all possible.
- d. Ponder the background behind you and the image you are trying to project.

II. Hearings with the Court/Trustee by telephone

- a. Use the mute button. Until your hearing is called, mute your telephone and do not forget to unmute as your case is being called.
- b. Do not place the call on hold. The hold music/message will be piped through to the courtroom/hearing room.
- c. Do not interrupt. There is a tendency when on the telephone to start talking just a bit too early. Remember, this is still a hearing, not just a phone call.
- d. Make sure your client has the telephone number and access code in advance of the hearing and understands how to call in.
- e. Know your court’s procedures. Check the Court’s standing rules and procedures under the Covid-19 general orders as well as the Judge’s specific website. Some Judges have VERY specific rules.

III. Hearings with the Court/Trustee by video

- a. Most courts do have procedures for remote hearings. Learn and know them.
- b. Test out the video conferencing with your client before the hearing. Make sure they are comfortable and familiar with, most likely, Zoom, prior to the hearing. You do not want to have someone who cannot unmute themselves and be dealing with that at the hearing. Straighten it out ahead of time.
- c. Speak slowly and clearly, and do not interrupt. Sometimes a hiccup in the connection can cause one to believe a person is done speaking. Wait a second before you go ahead.

Attached are sample general orders from the Northern District of Illinois Bankruptcy Court regarding court proceedings during the COVID-19 pandemic, sample orders. establishing procedures for virtual hearings in a specific case, examples of procedures and some examples of Judges’ videoconference rules and tips.

¹ Outline modified from American Bankruptcy Institute Consumer Bankruptcy Conference on 11/11/2020

OBJECTIONS TO DISCHARGE, DISCHARGEABILITY AND MOTIONS TO DISMISS

- I. The purpose and scope of this presentation is an overview and is not intended to be comprehensive. (I have chosen to leave out several topics based on time limitations.)
- II. Notice and Prior Discharge.
 - A. How and when did you and/or your client receive Notice of Bankruptcy Case.
 - B. Do not be overly technical with Notice as Notice can be Actual or Constructive and be effective
 - C. *In Re Mendiola*, 99 B.R. 864 (Bankr.N.D.Ill.1989).
 - D. Do not be a bull in china shop. Know and understand the facts; avoid surprises.
- III. Timing
 - A. Bankruptcy Rules 1017, 4004, 4007
 - B. Bankruptcy Rule 2004 and pre-filing Discovery.
- IV. Jurisdiction
 - A. Jurisdiction can be concurrent with State Court.
 - B. Generally, if fraud misrepresentation or similar is involved 11 USC 523(a)(2)(A), (a)(4) and (a)(6) the Case will likely be in Bankruptcy Court.
 - C. 11 USC 523(a)(6) not relevant if Chapter 13 unless the Debtor is applying for a Hardship Discharge.
 - D. Other sections can usually be brought in State Court BUT analyze who will be hearing what in any particular case as strategizing will give your client an advantage.
- V. Failure to Pay is likely NOT Nondischargeable
 - A. Good fact patterns likely require interaction or communication between individuals.
 - B. Fairness is not the issue or the question.
 - C. When drafting Complaint alleging fraud it must allege facts with particularity and provide the who what where why of the alleged fraud.
 - D. General Fraud does not work.
 - E. Be obvious with the fraud or misrepresentation in any pleading.
 - F. These cases can be expensive so be sure the client is aware of the cost of the proceedings and there is reason for the proceedings.
- VI. 11 USC 727 can be dangerous to use for the unwary.
 - A. If you win all creditors have non dischargeable debts, not just you.
 - B. 11 USC 727 actions are difficult to settle and require Notice to All Creditors– See Rule 7041.
 - C. You can attract the attention of the UST which can limit your options.

VII. 11 USC 523(a)(2)(A)

- A. Section 523(a)(2)(A) of the Code excepts from discharge “any debt . . . for money . . . to the extent obtained by false pretenses, a false representation, or actual fraud.” 11 U.S.C. § 523(a)(2)(A). Although some courts suggest there is a single test for determining nondischargeability under section 523(a)(2)(A), that section in fact describes three separate grounds: false pretenses, false representation, and actual fraud. *City of Chi. v. Spielman (In re Spielman)*, 588 B.R. 198, 204 (Bankr. N.D. Ill. 2018); *Board of Educ. v. Monarrez (In re Monarrez)*, 588 B.R. 838, 858 (Bankr. N.D. Ill. 2018).
- B. The elements of a cause of action under Section 523(a)(2)(A) are as follows:
- a. the debtor made the representation;
 - b. the time of the representation, the debtor knew it to be false;
 - c. the debtor made the representation with the intent and purpose of deceiving the plaintiff;
 - d. the plaintiff justifiably relied on the representation; and
 - e. the plaintiff sustained a loss or damage as the proximate consequence of the representation having been made. *In Re: Ojeda*, 397 B.R. 67, 84 (Bkrtcy. N.D. Ill. 2004); *In Re: Powell*, 201 I WL 5101753 (Bkrtcy. N.D. Ill. 2011); *In Re: Shai*, 464 B.R. 792, 797 (Bkrtcy.N.D.Ill.2012).

VIII. 11 USC 523(a)(4)

- A. Section 523(a)(4) of the Code excepts from discharge “for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.” 11 U.S.C. § 523(a)(4). As with 11 USC 523(a)(2)(A) there are three separate causes of action.
- B. *Larceny*. “Larceny under § 523(a)(4) necessitates a showing that a debtor wrongfully took property from its rightful owner with fraudulent intent to convert such property to his own use without the owner's consent.” *Vozella v. Basel-Johnson (In re Basel-Johnson)* , 366 B.R. 831, 848 (Bankr. N.D. Ill. 2007) ; *see also Bank Calumet v. Whitters (In re Whitters)* , 337 B.R. 326, 331-32 (Bankr. N.D. Ind. 2006) (“ ‘Larceny’ involves a concept in which the debtor has wrongfully acquired property of which another person or entity is the owner.”). *Busey Bank vs. Cosman (In Re Cosman)*, 616 B.R 353 (Bankr.N.D.Ill.2020).
- C. *Embezzlement*. For purposes of Bankruptcy discharge, embezzlement is the fraudulent appropriation of property that has been entrusted or the fraudulent appropriation by one who otherwise received the property lawfully. *In Re: Jacobs*, 448 B.R. 453,477 (Bkrtcy N.D. Ill. 2011). The Plaintiff must allege and prove: (1) that the Debtor appropriated the Creditor's property for the Debtor's own benefit; and (2) That the Debtor acted with fraudulent intent. *In Re: Jacobs*, supra at 447. These requisites can be shown by the existence of an expressed trust and intentional deceit. *In Re: Jacobs*, at 477.
- D. *Fraud in a Fiduciary Capacity*. To establish that a debt is non-dischargeable under this section, a creditor must prove that (1) the debtor acted as a fiduciary to creditor at the time the debt was created; and (2) the debt was caused by fraud or defalcation. *See In re Beraman*, 629 F.3d 761, 766 (7th Cir. 2011); *In re Frain*, 230 F.3d 1014, 1019 (7th Cir. 2000); *Klingman v. Levinson*, 831 F.2d 1292, 1295 (7th Cir. 1987). The threshold inquiry in this case is whether the Debtor was acting in a fiduciary capacity for purposes of section 523(a)(4). There are two situations in which a person may be acting in a fiduciary capacity: where an express trust

exists or where the debtor had a fiduciary relationship with the creditor. "Express trusts require an explicit declaration of trust, a clearly defined trust *res*, and an intent to create a trust." *CFC Wireforms, Inc. v. Monroe (In re Monroe)*, [304 B.R. 349](#), 358 (Bankr. N.D.Ill. 2004). The next inquiry is whether a fiduciary relationship existed. *In re Monroe*, 304 B.R. at 358. The existence of a fiduciary relationship under section 523(a)(4) is a matter of federal law. *Id.* Not all persons treated as fiduciaries under state law are fiduciaries for the purposes of federal bankruptcy law. *Berman*, 629 F.3d at 767. As such, it is not sufficient to merely show that a debtor is a fiduciary under applicable state law. *Id.* The Seventh Circuit has defined a fiduciary relationship as "a difference in knowledge or power between fiduciary and principal which . . . gives the former a position of ascendancy over the latter." *In re Marchiando*, [13 F.3d 1111](#), 1116 (7th Cir. 1994). Courts have recognized certain relationships as fiduciary relationships for the purposes of section 523(a)(4), including lawyer-client, director-shareholder, and managing partner-limited partner. *In re Frain*, 230 F.2d at 1017. Conversely, "a joint venture between equals will not qualify as a fiduciary relationship." *Matter of Woldman*, [92 F.3d 546](#), 547 (7th Cir. 1996). *Buncio v. Rashid* (Bankr. N.D. Ill. 2013)

IX. 11 USC 523(a)(6)

- A. To state a cause of action under Section 523(a)(6) the complaint must allege that (1) the debtor owes a debt from injury that he caused; (2) that the Debtor's actions were willful and intended to cause the injury; and (3) that the actions were malicious and in conscious disregard of one's duties or without just cause or excuse. *In Re: Ludwig*, 508 B.R. 48,56 (Bkrtcy N.D. Ill 2014); *In Re: Braverman*, 463 B.R. 115, 119 (Bkrtcy N.D. Ill. 2011). An act is "malicious" if it is done "in conscious disregard of one's duties or without just cause or excuse." *First Weber Grp., Inc. v. Horsfall*, 738 F.3d 767, 775 (7th Cir. 2013). An act is "willful" if both the act itself and the resulting injury – "the consequences of [the] act" – are intended. *Kawaauhau v. Geiger*, 523 U.S. 57, 61-62 (1998). In *Jendusa-Nicolai v. Larsen*, 677 F.3d 320 (7th Cir. 2012), the Seventh Circuit defined the two concepts together, holding that a willful and malicious injury "is one that the injurer inflicted knowing he had no legal justification and either desiring to inflict the injury or knowing it was highly likely to result from his act." *Id.* at 324.
- B. Requires a clear intent to be Willful and Malicious.

X. 11 USC 727

- A. 727(a)(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—
 - (A) property of the debtor, within one year before the date of the filing of the petition; or
 - (B) property of the estate, after the date of the filing of the petition;
- B. 727(a)(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions

might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

C. 727(a)(4) the debtor knowingly and fraudulently, in or in connection with the case—

(A) made a false oath or account;

(B) presented or used a false claim;

(C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or
(D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs;

D. 727(a)(5)-the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities;

E. 7279(a)(6) the debtor has refused, in the case—

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

(B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or

(C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify;

XI. Motion to Dismiss based on § 707(b)(3)/Totality of the Circumstances

- A. Where, as here, no presumption of abuse arises under § 707(b)(2), § 707(b)(3) directs courts to consider whether the case is an “abuse” of chapter 7 based on other factors. Specifically, the court “shall consider” whether the case was filed in “bad faith,” §707(b)(3)(A), or whether “the totality of the circumstances of the debtor’s financial situation...demonstrates abuse.” § 707(b)(3)(B).
- B. Among the important factors to consider in determining whether a debtor’s case is an abuse under the totality of the circumstances is the debtor’s income and expenses. *See In re Ross-Tousey*, 549 F.3d 1148, 1161 (7th Cir 2008), citing with approval, *In re Zavorski*, 366 B.R. 758, 768 (Bankr. E.D. Mich. 2007). *See also*, Eugene R. Wedoff, Judicial Discretion to find Abuse Under Section 707(b), 71 Mo. L. Rev. 1035, 1047 (2006) (“if disposable income meets or exceeds the threshold, abuse should be found.”).
- C. Factually Based.

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS**

THIRD AMENDED GENERAL ORDER NO. 20-03

Court Proceedings During COVID-19 Public Emergency

Because a state of emergency has been declared in response to the spread of COVID-19, and because the Centers for Disease Control and Prevention have urged reduced contact among people to slow the spread of the disease, the U.S. Bankruptcy Court for the Northern District of Illinois issues this order, *effective October 13, 2020*, to protect public health.

1. Court hours. The Bankruptcy Court will remain open during normal business hours, pending further order of court. Because some deadlines under the Bankruptcy Code and Federal Rules of Bankruptcy Procedure cannot be changed, the Bankruptcy Court will remain open as long as possible.

2. All court calls to be heard electronically. All court calls will be held remotely by electronic means. No personal appearances in court will be necessary or permitted, unless the judge orders otherwise. Attorneys must direct their clients *not* to appear in person at the courthouse.

3. Motions. Local Rule 9013-1(E)(1) governing presentment of motions in court is suspended. All motions will be heard remotely by electronic means, without personal appearances. Movants *must* use one of the two attached Notice of Motion forms.

4. Court appearances by Zoom for Government or AT&T Teleconference. At the discretion of the individual judge, the bankruptcy court will use either Zoom for Government or AT&T Teleconference for court appearances. There is no charge for using these services (other

than the usual toll charges for Zoom for Government). Attorneys and parties in interest should consult the individual judge's page on the court's web site to see which service the judge uses.

a. Zoom for Government. Attorneys and parties may connect through Zoom for Government by computer or by telephone. To connect by audio only, a telephone or a computer with a microphone and speakers (or headphones) is necessary. To connect by video, a computer with a webcam and microphone or a smartphone with audio-visual capability is necessary.

To appear by video, use the following link: <https://www.zoomgov.com/> Then enter the meeting ID and password. The applicable meeting ID and password can be found on the judge's page on the court's web site: <https://www.ilnb.uscourts.gov>.

To appear by telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. The meeting ID and password will differ for each court call. The applicable meeting ID and password can be found on the judge's page on the court's web site: <https://www.ilnb.uscourts.gov>.

b. AT&T Teleconference. Attorneys and parties may connect through AT&T Teleconference only by telephone. To do so, dial the toll-free number and enter the access code followed by the pound (#) sign. The toll-free number and access code will differ for each judge and can be found on the judge's page on the court's web site: <https://www.ilnb.uscourts.gov>.

5. Protocols for electronic court appearances.

- a. Your computer or telephone must be on "mute" except when your case is called.
- b. Each time you speak, identify yourself for the record. Remember to speak slowly and distinctly. Do not interrupt others.
- c. Do not use a speaker phone or call from a public place. Disruptions or background noise may cause the judge to mute you or terminate your participation.

d. No one except the assigned court reporter or another person that the court directs may record the audio or video.

e. Though held remotely by electronic means, each court call is a judicial proceeding. Formalities of a courtroom will be observed. Participants must conduct themselves in a suitable manner and if appearing by video must dress appropriately.

6. Dates and times of individual judges' court calls. To avoid simultaneous electronic court calls, the judges will hear matters on the following schedule rather than as originally scheduled, noticed, or (unless otherwise indicated) shown on the court's web site. Attorneys must check the court's docket to ensure that a matter has not been rescheduled.

a. Outlying county court calls (Joliet, Kane County, Lake County): All outlying county court calls will be held on the same dates and at the same times as previously scheduled but will be held electronically.

b. Chapter 7 and Chapter 11 calls: Each judge's chapter 7 and chapter 11 call will be held on a single day as follows.

- Chief Judge Goldgar: Monday, original motions at 9:30 a.m., set matters at 10 a.m.
- Judge Baer: Wednesday, original motions at 1:00 p.m., set matters at 1:30 p.m.
- Judge Barnes: Monday, original motions at 1:00 p.m., set matters at 1:30 p.m.
- Judge Cassling: Tuesday, original motions at 9:30 a.m., set matters at 10:00 a.m.
- Judge Cleary: Wednesday, original motions at 10 a.m., set matters at 10:30 a.m.
- Judge Cox: Tuesday, original motions at 1:00 p.m., set matters at 1:30 p.m.
- Judge Doyle: Thursday, original motions at 10 a.m., set matters at 10:30 a.m.
- Judge Hunt: Thursday, all matters at 11 a.m.
- Judge Lynch: Wednesday, all matters at 11 a.m.

- Judge Schmetterer: Tuesday, original motions at 10 a.m., set matters at 10:30 a.m.
- Judge Thorne: Thursday, original motions at 9 a.m., set matters at 9:30 a.m.

c. Chapter 13 calls and Western Division Chapter 12 calls:

- Chief Judge Goldgar: Tuesday afternoon

1:15 p.m. trustee motions
 1:30 p.m. original motions
 2:00 p.m. set matters
 2:30 p.m. confirmations

- Judge Barnes: Thursday afternoon

1:00 p.m. trustee motions
 1:30 p.m. original motions
 2:00 p.m. set matters
 2:30 p.m. confirmations

- Judge Cassling: Thursday morning, at times currently shown on the court's web site

- Judge Cleary: Monday afternoon

1:00 p.m. trustee motions
 1:30 p.m. original motions
 2:00 p.m. set matters
 2:30 p.m. confirmations

- Judge Cox: Monday morning, at times currently shown on the court's web site

- Judge Doyle: Tuesday morning, at times currently shown on the court's web site

- Judge Lynch: Thursday morning

8:45 a.m. trustee motions
 9:00 a.m. original motions
 10:00 a.m. confirmations
 11:00 a.m. chapter 12 matters

- Judge Schmetterer: Wednesday morning, at times currently shown on the court's web site

- Judge Thorne: Wednesday afternoon

1:00 p.m. trustee motions
1:30 p.m. original motions
2:00 p.m. set matters
2:30 p.m. confirmations

7. Motions; Objection procedure; Service. The following procedures apply to all motions noticed for presentment on or after October 13, 2020.

- a. Every motion must be filed using the applicable attached Notice of Motion form. If a motion noticed for presentment on or after October 13, 2020, has already been filed, the movant must file and serve an amended notice of motion using the applicable Notice of Motion form.
- b. A party who objects to a motion and wants it called must file a Notice of Objection no later than two (2) business days before the presentment date.
- c. A Notice of Objection need only say that the respondent objects to the motion. No reasons need be given for the objection.^{1/}
- d. If a Notice of Objection is timely filed, the motion will be called on the presentment date.
- e. If no Notice of Objection is timely filed, the court may grant the motion without a hearing before the date of presentment.
- f. Local Rule 9013-1(D) governing service of motions is suspended in part. All motions must be served at least seven (7) days before the date of presentment, regardless of the method of service.

^{1/} For example, a trustee's objection to a chapter 13 debtor's motion to modify the plan post-confirmation need only say: "The trustee objects to the motion to modify the plan."

g. Any matter not subject to a deadline in the Bankruptcy Code or Bankruptcy Rules may be continued to another date by agreement of the parties. To obtain a continuance, the parties should contact chambers.

8. Trials and evidentiary hearings. All trials and evidentiary hearings will be held by video using the Zoom for Government platform. No trials and evidentiary hearings will be held in the courthouse. *See* General Order No. 20-05.

9. Original Non-Attorney Signatures. Section II.C.1 of the Administrative Procedures for the Case Management/Electronic Case Filing System is suspended. Electronic signatures using a method like DocuSign will be accepted.

10. Deadlines in Bankruptcy Code and Bankruptcy Rules unchanged. Nothing in this order alters in any respect deadlines under the Bankruptcy Code or Bankruptcy Rules.

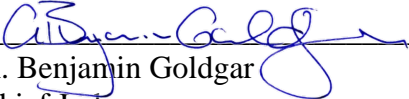
11. Authority of judges to enter orders unaffected. This order does not affect the authority of judges to enter orders in any bankruptcy case or proceeding.

12. Local Rules remain in effect. Except as provided in this order, the Local Rules of the Bankruptcy Court and the court's Administrative Procedures for the Case Management/Electronic Case Filing System remain in effect, including Local Rule 9013-2 concerning emergency motions.

13. Effective date; Superseding effect of this order. This order is effective October 13, 2020. On the effective date, this order supersedes all other orders and all notices from individual judges concerning court proceedings during the current emergency.

Dated: September 28, 2020

ENTERED FOR THE COURT:


A. Benjamin Goldgar
Chief Judge

1. Notice of Motion form for Zoom for Government

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

[caption]

NOTICE OF MOTION

TO: See attached list

PLEASE TAKE NOTICE that on _____, 20__, at _____ a.m./p.m., I will appear before the Honorable _____, or any judge sitting in that judge's place, and present the motion of _____ [to/ for] _____, a copy of which is attached.

This motion will be presented and heard electronically using Zoom for Government. No personal appearance in court is necessary or permitted. To appear and be heard on the motion, you must do the following:

To appear by video, use this link: <https://www.zoomgov.com/>. Then enter the meeting ID and password.

To appear by telephone, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID and password.

Meeting ID and password. The meeting ID for this hearing is _____ and the password is _____. The meeting ID and password can also be found on the judge's page on the court's web site.

If you object to this motion and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without a hearing.

[Name of movant]

By: _____

[Name, address, telephone number,
and email address of counsel]

CERTIFICATE OF SERVICE

I, _____, certify [if an attorney]/declare under penalty of perjury under the laws of the United States of America [if a non-attorney] that I served a copy of this notice and the attached motion on each entity shown on the attached list at the address shown and by the method indicated on the list on _____, 20__, at _____ a.m./p.m.

2. Notice of Motion form for AT&T Teleconference

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

[caption]

NOTICE OF MOTION

TO: See attached list

PLEASE TAKE NOTICE that on _____, 20__, at _____ a.m./p.m., I will appear before the Honorable _____, or any judge sitting in that judge's place, and present the motion of _____ [to/ for] _____, a copy of which is attached.

This motion will be presented and heard electronically using AT&T Teleconference. No personal appearance in court is necessary or permitted. To appear and be heard on the motion, you must call this toll-free number: _____. Then enter access code _____ followed by the pound (#) sign.

If you object to this motion and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without a hearing.

[Name of movant]

By: _____

[Name, address, telephone number,
and email address of counsel]

CERTIFICATE OF SERVICE

I, _____, certify [if an attorney]/declare under penalty of perjury under the laws of the United States of America [if a non-attorney] that I served a copy of this notice and the attached motion on each entity shown on the attached list at the address shown and by the method indicated on the list on _____, 20__, at _____ a.m./p.m.

615 B.R. 479

IN RE: Patrick L. KROOK, Debtor.

**Chad A. Groom, Plaintiff,
v.
Patrick L. Krook, Defendant.**

**No. 19 B 2216
No. 19 A 982**

**United States Bankruptcy Court, N.D.
Illinois, Eastern Division.**

Signed June 1, 2020

[615 B.R. 482]

Attorney for plaintiff Chad A. Groom : Paul
M. Bach, Bach Law Offices, Northbrook, IL

Attorney for defendant Patrick L. Krook :
James T. Magee, Magee, Hartman, P.C.,
Round Lake, IL

MEMORANDUM OPINION

A. Benjamin Goldgar, United States
Bankruptcy Judge

Before the court for ruling is the motion of defendant Patrick Krook to dismiss the three-count adversary complaint of plaintiff Chad Groom. The complaint alleges that Krook, through his company, Show Your Auto, LLC, agreed to act as broker for Groom's purchase of a classic 1970s "muscle car." Groom paid Krook for the car. But Krook had never contacted the seller and so never delivered the car. He also never returned Groom's money. Groom objects to the dischargeability of Krook's debt.

For the reasons below, Krook's motion to dismiss the complaint will be denied.

1. Jurisdiction

The court has subject matter jurisdiction under 28 U.S.C. § 1334(b) and the district

court's Internal Operating Procedure 15(a). This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

2. Background

On a Rule 12(b)(6) motion, all well-pleaded allegations in the complaint are taken as true, and all reasonable inferences are drawn in favor of the non-movant. *Viamedia, Inc. v. Comcast Corp.*, 951 F.3d 429, 454 (7th Cir. 2020). Exhibits attached to the complaint are also considered, as are matters subject to judicial notice. *Geinosky v. City of Chi.*, 675 F.3d 743, 745 n.1 (7th Cir. 2012).

The complaint and exhibits allege the following facts. Groom is a resident of Missouri. Krook lives in Lake Villa, Illinois, and is an automobile sales broker. Krook did business through an Illinois limited liability company, Show Your Auto, LLC. He was Show Your Auto's sole member as well as its manager.¹

In August 2018, Groom found a 1970 Dodge Challenger listed for sale on the website classiccars.com. The price was \$99,950. Groom asked about the car through the website and received a call from Krook that same day. Krook told Groom he was the broker for the car's owner and had authority to act as the owner's agent.

After negotiations, Groom and Krook reached an agreement for the sale of the

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car. The seller would make several cosmetic⁴⁸³ repairs, and Groom would pay \$96,750.²

In December 2018, Krook sent Groom an email telling him to wire \$86,750 (the purchase price minus Groom's initial \$10,000 deposit) to Show Your Auto. Once the seller made the repairs, Krook would release the funds to him, and the seller would release the

car for transport. Krook added that he would obtain the title from the seller.

Groom wired the money, but Krook never delivered the car because he never paid the seller. In fact, the seller knew nothing of the proposed sale until later when Groom contacted him.

In January 2019, Krook filed a chapter 7 bankruptcy case. Groom then began this adversary proceeding, filing a three-count complaint alleging that Krook's debt to him is nondischargeable. Count I is a claim under section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), that the debt is one for money obtained by fraud. Count II is a claim under section 523(a)(4), 11 U.S.C. § 523(a)(4), that the debt resulted from embezzlement. Count III is a claim under section 523(a)(6), 11 U.S.C. § 523(a)(6), that the debt is for a willful and malicious injury.

Krook has moved to dismiss all three counts for failure to state a claim. Groom opposes the motion.

3. Discussion

Krook's motion will be denied. All three counts of the complaint state plausible nondischargeability claims.

a. Rule 12(b)(6) Standards

To survive a motion to dismiss under Rule 12(b)(6), a complaint must clear "two easy-to-clear hurdles." *EEOC v. Concentra Health Servs., Inc.*, 496 F.3d 773, 776 (7th Cir. 2007). First, the complaint must describe the claim in enough detail to give the defendant fair notice of its nature. *Cornielson v. Infinium Capital Mgmt., LLC*, 916 F.3d 589, 598 (7th Cir. 2019). "[A] formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).

Second, the claim must be "plausible on its face," *id.*, at 570, 127 S.Ct. 1955, meaning the plaintiff's right to relief must rise above a "speculative level," *id.* at 555, 127 S.Ct. 1955; *see also Cornielson*, 916 F.3d at 598. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal v. Ashcroft*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009); *see also Lewis v. City of Chi.*, 914 F.3d 472, 475 (7th Cir. 2019).

b. Personal Liability

Before the substance of Groom's claims can be discussed, a threshold issue must be addressed. Krook contends that the funds Groom wired to Show Your Auto were "the funds of Show Your Auto," not Krook. (Mot. at 6). In Krook's view, then, any debt to Groom is not Krook's but "that of the corporation, Show Your Auto, LLC." (*Id.* at 2).

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Krook is mistaken. Although he did business through his limited liability company, he can be held personally liable to Groom. It is well established in Illinois that a business corporation's officer who participates actively in the corporation's torts is subject to personal liability. *See Bank of Commerce & Trust Co. v. Strauss (In re Strauss)*, 523 B.R. 614, 632 (Bankr. N.D. Ill. 2014). The same principle applies to limited liability companies. In 2019, the General Assembly amended the Illinois Limited Liability Company Act to provide that "a member or manager of a limited liability company may be liable under law other than this Act for its own wrongful acts or omissions, even when acting or purporting to act on behalf of a limited liability company." 805 ILCS 180/10-10(a-5).³ Although the General Assembly enacted the amendment after the events alleged here, its intention was to "clarify ...

existing law," not change it. *Id.* Clarifying amendments apply retroactively. *United States ex rel. Garbe v. Kmart Corp.*, 824 F.3d 632, 642 (7th Cir. 2016) ; *People v. Ramsey*, 192 Ill. 2d 154, 167, 735 N.E.2d 533, 540, 248 Ill.Dec. 882 (2000).

Groom alleges that Krook participated in Show Your Auto's tortious conduct. That is enough to make Krook personally liable to Groom and the debt potentially nondischargeable in Krook's bankruptcy case.

c. Count I – False Representation

So to the claims themselves. Count I alleges a plausible claim under section 523(a)(2)(A) that Krook fraudulently induced Groom to pay him \$97,650 for a car Krook had no intention of delivering.

Section 523(a)(2)(A) of the Code excepts from discharge "any debt ... for money ... to the extent obtained by false pretenses, a false representation, or actual fraud." 11 U.S.C. § 523(a)(2)(A). Although some courts suggest there is a single test for determining nondischargeability under section 523(a)(2)(A), that section in fact describes three separate grounds: false pretenses, false representation, and actual fraud. *City of Chi. v. Spielman (In re Spielman)*, 588 B.R. 198, 204 (Bankr. N.D. Ill. 2018) ; *Board of Educ. v. Monarrez (In re Monarrez)*, 588 B.R. 838, 858 (Bankr. N.D. Ill. 2018).

Count I is a claim for representational fraud. To state a representational fraud claim under section 523(a)(2)(A), a creditor must allege that (1) the debtor made a false representation he either knew was false or made with reckless disregard for its truth; (2) the debtor made the false representation with an intent to deceive or defraud; and (3) the creditor justifiably relied on the false representation. *In re Davis*, 638 F.3d 549, 553 (7th Cir. 2011) ; *Ojeda v. Goldberg*, 599 F.3d 712, 716-17 (7th Cir. 2010) ; *Strauss*, 523 B.R. at 625.

Groom alleges each element. According to Groom, Krook represented that he was the seller's broker and could act as his agent. Krook also represented that if Groom would wire his company the remaining \$86,750, he would obtain the car title from the seller, would have the seller make the agreed repairs, would release the payment to the seller, and would have the seller release the car for transport. Not one of these representations was true –

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and Krook knew it, because he never told the seller any of this. Instead, Krook fabricated the entire transaction to induce Groom to part with his money. That Krook never spoke to the seller suggests both that he knew his representations were false and that he intended to deceive Groom. And Groom justifiably relied on the representations, taken in by Krook's phone call in response to his website inquiry. No " cursory examination or investigation " would have revealed that Krook was making the whole thing up. *Field v. Mans*, 516 U.S. 59, 71, 116 S.Ct. 437, 133 L.Ed.2d 351 (1995) (internal quotation omitted).

Apart from his contention that the debt is purely corporate, Krook's only basis for urging dismissal is that Count I alleges false promises – false representations of future conduct – and those are not actionable.⁴

Not so. Krook is right that a false representation must ordinarily relate to a "present or past fact." *Landmark Credit Union v. Sharp (In re Sharp)*, 561 B.R. 673, 680 (Bankr. N.D. Ill. 2016) (internal quotation omitted); *Berger Schatz, LLP v. Livermore (In re Livermore)*, Nos. 12 B 30720, 12 A 1689, 2013 WL 1316549, at *4 (Bankr. N.D. Ill. Apr. 3, 2013). He is also right that the false representations Count I alleges are mostly promises.⁵ But a false promise will be actionable and so will support a section 523(a)(2)(A) claim if the debtor made the promise with no intention of keeping it. *Holtz*

v. JPMorgan Chase Bank, N.A. , 846 F.3d 928, 932 (7th Cir. 2017) ("[M]aking a promise with intent not to keep it is fraud."); *Sullivan v. Ratz* , 551 B.R. 338, 345 (N.D. Ill. 2016). Groom's allegation that Krook never contacted the seller he purported to represent is enough to support an inference that he never had any intention of serving as broker or selling the car.

Because Count I alleges a plausible claim under section 523(a)(2)(A), Krook's motion to dismiss that count will be denied.

d. Count II – Embezzlement

Krook's motion to dismiss Count II will also be denied. Count II alleges a plausible embezzlement claim under section 523(a)(4).

Section 523(a)(4) excepts from discharge debts for, among other things, "embezzlement." Embezzlement under section 523(a)(4) means the "fraudulent appropriation of property by a person to whom such property was entrusted or into whose hands it has lawfully come." *In re Weber* , 892 F.2d 534, 538 (7th Cir. 1989) (internal quotation omitted). An embezzlement claim has two elements: (1) the debtor appropriated the creditor's property for the debtor's own benefit, and (2) the debtor acted with fraudulent intent or deceit. *Kontos v. Manevska (In re Manevska)* , 587 B.R. 517, 534 (Bankr. N.D. Ill. 2018) ; *Zamora v. Jacobs (In re Jacobs)* , 448 B.R. 453, 477 (Bankr. N.D. Ill. 2011). Fraudulent intent means simply the debtor's knowledge that he has no right to use the property.

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FNA Grp., Inc. v. Arvanitis (In re Arvanitis) , 523 B.R. 633, 639 (Bankr. N.D. Ill. 2015) (internal quotation omitted).

Count II pleads both elements. Groom alleges that he entrusted Krook with \$96,750 on the belief that Krook was acting as broker for the

seller of the car. Rather than forward the money to the seller, Krook made off with it, knowing he had no right to do so. "Using access that has been granted to funds to misappropriate those funds constitutes embezzlement." *Manevska* , 587 B.R. at 534.⁶

Krook argues that Count II should be dismissed because "no specific facts are alleged." (Mot. at 4). But facts are alleged. Those facts support the inference that Krook appropriated Groom's money for his own benefit and did so with fraudulent intent. The only facts Krook asserts are missing are a "formal agreement ... establishing an escrow" and a "statement as to what happened to the money." (*Id.* at 5). Krook cites no authority for the proposition that someone commits embezzlement only if he misappropriates money in escrow, and there is none. Nor does he cite authority for the proposition that a creditor must allege with any specificity "what happened to the money." It was enough for Groom to allege that he entrusted Krook with the money, and Krook failed to pay the seller. The reasonable inference is that Krook kept Groom's money, using it for his own purposes. On a motion to dismiss, reasonable inferences are drawn in the plaintiff's favor. *Viamedia* , 951 F.3d at 454.

To support dismissal, Krook also relies on *Freer v. Beetler (In re Beetler)* , 368 B.R. 720 (Bankr. C.D. Ill. 2007), but the decision gives him no help. In *Beetler* , Freer delivered a tractor to Beetler to sell on consignment. *Id.* at 723. Beetler sold the tractor but failed to pay Freer her share of the sale proceeds. *Id.* at 724. Beetler later filed a bankruptcy case, and Freer brought an adversary proceeding alleging that Beetler's debt to her was nondischargeable. *Id.* After trial, the court rejected Freer's section 523(a)(4) embezzlement claim. *Id.* at 726. Because Beetler had sold the tractor in accordance with the consignment agreement, he could not have embezzled it. *Id.* And because section 2-401(2) of the Illinois Commercial Code, 810 ILCS 5/2-401(2), applied, the

tractor – and the proceeds from its sale – belonged to Beetler. *Id.* at 727. "One cannot embezzle property that he lawfully owns." *Id.*

The circumstances here are not the same. As Krook admits (Mot. at 5), Groom was the buyer of the car, not the seller. As buyer, Groom delivered money to Krook to pay the seller, not goods for Krook to sell. The distinction is critical. Because Groom was the buyer providing funds to pay for goods rather than the seller providing goods to be sold, section 2-401 did not apply to his portion of the transaction. ICC section 2-401 concerns the passing of title to "goods," and the funds supplied as payment

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for goods are not themselves "goods." *See* 810 ILCS 5/2-105(1) (stating that "goods" do not include "the money in which the price is to be paid"). So the money Groom paid Krook belonged to Groom, not to Krook. *Beetler* might be relevant here had Groom been the seller of the car rather than the buyer. But, as Krook concedes, he was not.

Because Count II alleges a plausible embezzlement claim under section 523(a)(4), Krook's motion to dismiss that count will also be denied.

e. Count III – Willful and Malicious Injury

Finally, the motion will be denied as to Count III as well. Count III states a plausible claim under section 523(a)(6) of the Code.

Section 523(a)(6) excepts from discharge a debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6). To state a claim under section 523(a)(6), a creditor must allege that (1) the debtor owes a debt resulting from an injury he caused to another entity or that entity's property; (2) his actions were willful; and (3) his actions were

malicious. *Oakland Ridge Homeowners Ass'n v. Braverman (In re Braverman)*, 463 B.R. 115, 119 (Bankr. N.D. Ill. 2011). An act is "malicious" if it is done "in conscious disregard of one's duties or without just cause or excuse." *First Weber Grp., Inc. v. Horsfall*, 738 F.3d 767, 775 (7th Cir. 2013). An act is "willful" if both the act itself and the resulting injury – "the consequences of [the] act" – are intended. *Kawaauhau v. Geiger*, 523 U.S. 57, 61-62, 118 S.Ct. 974, 140 L.Ed.2d 90 (1998). In *Jendusa-Nicolai v. Larsen*, 677 F.3d 320 (7th Cir. 2012), the Seventh Circuit defined the two concepts together, holding that a willful and malicious injury "is one that the injurer inflicted knowing he had no legal justification and either desiring to inflict the injury or knowing it was highly likely to result from his act." *Id.* at 324.

As its language suggests, the statute excepts debts resulting from intentional torts. *Kawaauhau*, 523 U.S. at 58, 118 S.Ct. 974. Both fraud and embezzlement are intentional torts, and both will support a section 523(a)(6) claim. And since Counts I and II state claims for fraud and embezzlement under sections 523(a)(2)(A) and (4), Count III necessarily states a claim under section 523(a)(6). Granted, Count III adds little or nothing to those claims, since the relief Groom requests in each instance is the same. But pleading multiple legal theories each of which would lead to the same relief is no basis for dismissal. *Chambers v. Chesapeake Appalachia, L.L.C.*, 359 F. Supp. 3d 268, 278 (M.D. Pa. 2019); *Zidek v. Analgesic Healthcare, Inc.*, No. 13 C 7742, 2014 WL 2566527, at *2 (N.D. Ill. June 6, 2014). A plaintiff need not plead legal theories in the first place. *Koger v. Dart*, 950 F.3d 971, 974 (7th Cir. 2020).

Krook disagrees. According to Krook, conduct that would make out a claim under sections 523(a)(2)(A) and (4) cannot make out a claim under section 523(a)(6). Those statutes, he says, are "[mutually] exclusive." (Mot. at 7).

Krook's position once held sway. Because a specific statute (like section 523(a)(2)(A)) controls over a general one (like section 523(a)(6)), and because one statute will generally not be read to render another superfluous, many decisions found the two Code sections "mutually exclusive." *Wachovia Secs., LLC v. Jahelka (In re Jahelka)* , 442 B.R. 663, 671 (Bankr. N.D. Ill. 2010) (citing cases); *see also*

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Petti Murphy & Assocs. v. Eriksen (In re Eriksen) , Nos. 11 B 28958, 11 A 2120, 2012 WL 3150325, at *7 (Bankr. N.D. Ill. Aug. 2, 2012) ; *Media House Prods., Inc. v. Amari (In re Amari)* , 483 B.R. 836, 853 (Bankr. N.D. Ill. 2012). These decisions found support in others like *Jendusa-Nicolai* , 677 F.3d at 322 (observing that "not all intentional torts are covered" in section 523(a)(6)), and *Berkson v. Gulevsky (In re Gulevsky)* , 362 F.3d 961, 963 (7th Cir. 2004) (declaring that "the subsections of § 523 should not be construed to make others superfluous").

No longer. In *Husky Int'l Elecs., Inc. v. Ritz* , --- U.S. ---, 136 S. Ct. 1581, 194 L.Ed.2d 655 (2016), the Court brushed aside an argument that interpreting "actual fraud" in section 523(a)(2)(A) to encompass fraudulent transfers would "render duplicative two other exceptions to discharge." *Id.* at ---, 136 S. Ct. at 1588. The Court acknowledged there was "overlap" but said that in section 523(a) "overlap appears inevitable." *Id.* Since *Husky* , courts have read the decision to reject the argument that a creditor cannot base claims under section 523(a)(6) and other subsections of section 523(a) on the same conduct. *See, e.g., Bryant v. Bryant (In re Bryant)* , Nos. 18-11348-t7, 18-1044-t, 2019 WL 2617472, at *4 (Bankr. D.N.M. 2019) (finding embezzlement claim fell under both sections 523(a)(4) and (a)(6)); *Bankers Healthcare Grp. v. Moss (In re Moss)* , 598 B.R. 508, 517 (Bankr. N.D. Ga. 2019) (stating that section 523(a)(6) claims "need not be

distinct" from section 523(a)(2)(A) and (B) claims); *Yahalomey Paz Israel, G.P. v. Wolf (In re Wolf)* , 577 B.R. 327, 346 (Bankr. C.D. Cal. 2017). That Groom's section 523(a)(6) claim overlaps with his other claims, then, is not a reason to dismiss it.²

Because Count III states a plausible section 523(a)(6) claim, the motion to dismiss that count will be denied.

4. Conclusion

The motion of defendant Patrick Krook to dismiss the adversary complaint of plaintiff Chad Groom is denied. A separate order will be entered consistent with this opinion.

Notes:

¹ The complaint describes Krook as Show Your Auto's "sole owner" – or "member." *See* 805 ILCS 180/1-5 (2018). The Illinois Secretary of State's website shows that Krook was also its manager. The court can take judicial notice of information on government websites. *Denius v. Dunlap* , 330 F.3d 919, 926 (7th Cir. 2003).

² The complaint raises more questions than it answers about the date of the agreement and the sale price. Groom alleges that he reached an agreement with Krook after "months of negotiating." (Compl. ¶ 11-1). (After paragraph 12, the complaint's numbering starts over with paragraph 9.) But Groom first contacted Krook on August 28, 2018, and Krook's invoice to Groom is dated September 18, 2018, only three weeks later. (Compl. Ex. A). The invoice also lists the sale price as \$86,750 (*id.*), and Groom alleges that sum as the debt he wants declared nondischargeable, not the \$96,750 he says he paid Krook.

³ The amendment was meant to overturn *Dass v. Yale* , 378 Ill.Dec. 293, 3 N.E.2d 858, 865 (Ill. App. Ct. 1st Dist. 2013), which held

that under section 10-10 of the Act an LLC's manager is not personally liable for fraud committed on the LLC's behalf. *See* 805 ILCS 180/10-10(a-5) (stating that "the purpose of this subsection ... is to overrule the interpretation of subsections (a) and (d) in *Dass v. Yale* ").

⁴ Krook makes a passing reference to Rule 9(b), Fed. R. Civ. P. 9(b) (made applicable by Fed. R. Bankr. P. 7009), apparently intending to argue that Groom has not pled fraud with particularity. (Mot. at 2). But Krook never develops the argument. It is not the court's job to make parties' arguments for them. *Furry v. United States* , 712 F.3d 988, 994 n.1 (7th Cir. 2013). "Perfunctory and undeveloped arguments are waived." *M.G. Skinner & Assocs. Ins. Agency, Inc. v. Norman-Spencer Agency, Inc.* , 845 F.3d 313, 321 (7th Cir. 2017).

⁵ Mostly, but not entirely. Krook's false representation that he was the broker for the car's seller and had authority to act as the seller's agent was a representation of present fact.

⁶ Groom suggests that Count II also states a claim under section 523(a)(4) for "larceny." (Resp. at 8); *see* 11 U.S.C. § 523(a)(4). He is mistaken. Larceny is "the fraudulent and wrongful taking and carrying away of the property of another with intent to convert such property to the taker's use without the consent of the owner." *Schaul v. Ludwig (In re Ludwig)* , 527 B.R. 614, 621 (Bankr. N.D. Ill. 2015). The difference between larceny and embezzlement lies in how the property came into the debtor's possession. "[E]mbezzled property comes into the debtor's hands lawfully, while larceny requires that the debtor obtain the property unlawfully." *Hebl v. Windeshausen* , 590 B.R. 871, 877-78 (W.D. Wis. 2018) ; *see also Manevska* , 587 B.R. at 535. Krook gained possession of Groom's money lawfully, in the sense that Groom willingly put the money in Krook's hands. Groom's claim concerns what Krook

did with the money *after* it was in his hands. Had Krook used the money to pay the seller and then delivered the car, Groom would have no complaint.

⁷ None of this means section 523(a)(6) is merely redundant. Section 523(a)(6) applies to some conduct that sections 523(a)(2)(A) and (4) do not. Had Krook punched Groom in the nose or burned down his house, for example, Groom would have a nondischargeability claim for Krook's willful and malicious injury to Groom's person or property but no nondischargeability claim for fraud or embezzlement.

99 B.R. 864 (1989)

In re Isabel O. MENDIOLA, Debtor.

Bankruptcy No. 88 B 03378.

**United States Bankruptcy Court, N.D.
Illinois, E.D.**

April 21, 1989.

Mathias & Schmarak, P.C., Sidney H.
Mathias, Arlington Heights, Ill., for debtor.

Phillip D. Levey, Chicago, Ill., former
trustee.

James S. Laing, Kirkland & Ellis, Chicago,
Ill., for creditor.

MEMORANDUM OPINION

RONALD S. BARLIANT, Bankruptcy
Judge.

The motion now under consideration is typical of many filed in this Court. The Debtor seeks to reopen her no-asset Chapter 7 bankruptcy case. The sole purpose for that reopening would be to allow the Debtor to amend her schedules to add the names of creditors who held claims against the Debtor before the bankruptcy case was filed. As is also typical, the Debtor alleges that the omission of these pre-petition creditors from the schedules was inadvertent and innocent. The Debtor believes that reopening the case and amending the schedules is necessary to discharge these debts. The Debtor is wrong in that belief, and, because reopening the case to amend schedules would not affect the rights or liabilities of anyone, but would only be an exercise in futility, the motion will be denied.

The facts in this case are simple. The Debtor filed a petition for relief under Chapter 7 of the United States Bankruptcy Code on March 3, 1988. The schedules filed by the Debtor revealed no assets available for distribution to creditors. The Clerk of this

Court, in accordance with applicable rules,¹ notified the creditors listed in the Debtor's schedules of the date set for the meeting of creditors and the last day for the filing of complaints to determine the dischargeability of debts under 11 U.S.C. § 523(c) or objections to the discharge of the debtor. The Clerk's notice also advised those creditors that (emphasis added):

It appears from the schedules of the Debtor that there are no assets from which any dividends can be paid to the creditors, *it is unnecessary for any creditor to file his/her claim at this time* in order to share in any distribution from the estate. If it subsequently appears that there are assets from which a dividend may be paid, creditors will be so notified and given an opportunity to file their claims.

The Court granted the Debtor her discharge, releasing her from pre-petition debts, on June 21, 1988. The trustee appointed in the case discovered no assets and filed a report so stating. The Court approved that report, discharged the trustee, cancelled the trustee's bond, and the case was closed on November 15, 1988.²

Thereafter, according to her motion, the Debtor learned of creditors who "were inadvertently omitted from the Schedules."

[99 BR 865]

The Debtor now wants this Court to reopen the case so that she can amend her schedules to add the names of creditors who were not listed on the original schedules.

The only authority for reopening a case is contained in Section 350(b) of the Bankruptcy Code, 11 U.S.C. § 350(b): "A case may be reopened in the Court in which such case was closed to administer assets, to accord relief to

the Debtor, or for other cause." There are no assets here to administer. Therefore the only grounds that might exist to reopen this case are "to accord relief to the Debtor, or for other cause."

The Debtor believes that reopening this case will accord her relief. Specifically, the Debtor believes that reopening the case and amending the schedules will bring the debts she intends to list in those amended schedules within the scope of her discharge. She believes that otherwise those debts will not be discharged and the creditors will be able to sue her to collect their debts.

Certainly, the Debtor's discharge is important relief, and many courts have assumed, as the Debtor does here, that debts that are not scheduled are not discharged. Those courts, based upon their assumption about the law of discharge, have allowed reopenings for the benefit of innocent, good faith Debtors. *See, e.g., Matter of Stark*, 717 F.2d 322 (7th Cir.1983); *In re Rosinski*, 759 F.2d 539 (6th Cir.1985); *In re Soult*, 88 B.R. 801 (Bankr.S.D.Ohio 1988). Other courts, making the same assumption that an unscheduled debt is excluded from the Debtor's discharge, have refused to reopen closed cases to permit late scheduling where the court has found "fraud, intentional design or reckless disregard" in the Debtor's conduct. *See, e.g., In re Smith*, 68 B.R. 897, 901 (Bankr.N.D.Ill. 1987); *In re Long*, 93 B.R. 791 (Bankr.M.D. Ga.1988).

A few courts, however, have closely analyzed the language of the Bankruptcy Code and reached the conclusion, with which this Court agrees, that, "the filing of an amended creditor schedule after discharge has been granted in a no-asset Chapter 7 case has absolutely no effect on the dischargeability of debt." *In re Karamitsos*, 88 B.R. 122, 122 (Bankr.S.D.Tex.1988); "Reopening a case to allow amendment of schedules is futile. The debt in question was either discharged or excepted from discharge based on an analysis

of § 523. Subsequent actions by the debtor cannot affect whether or not the debt has already been discharged." *In re Anderson*, 72 B.R. 495, 497 (Bankr.D.Minn.1987); "The debts which are sought to be added to the schedules by these debtors were, therefore, discharged, even without reopening the case and allowing the requested additions. . . ." *In re Padilla*, 84 B.R. 194, 196 (Bankr.D.Colo.1987).³ *See also, Norton Bankr. Rules Pamphlet*, 1988-89 ed., Editor's Comment (1983), p. 317 ("The amendment to the schedules to add a creditor has no bearing whatsoever on the dischargeability, vel non, of the liability owed to the creditor.")

In order to understand why a debtor does not benefit from the reopening of a closed no-asset case to permit the filing of amended schedules it is necessary to examine the scope of the bankruptcy discharge. Section 727(b) of the Bankruptcy Code, 11 U.S.C. § 727(b), defines the scope of a Chapter 7 debtor's discharge. Under that section, the discharge "discharges the debtor from *all* debts that arose before the date of the order for relief," except as provided in Section 523.

The operative word is "all". There is nothing in Section 727 about whether the debt is or is not scheduled. So far as that section is concerned, a pre-bankruptcy debt is discharged, whether or not it is scheduled. But, by the very terms of Section 727, the discharge is subject to the provisions of Section 523, so we need to look at Section 523 to see if that Section says anything about debts that are not scheduled.

[99 BR 866]

Section 523(a) provides that, "a discharge under section 727 . . . does not discharge an individual debtor from any debt" described in the ten sub-sections of Section 523(a). 11 U.S.C. § 523(a). Those ten subsections describe debts that are excluded from the debtor's discharge, which is otherwise all-inclusive.

Among the debts described in Section 523(a), and thereby excluded from the discharge, are (in very general terms, and omitting the exceptions, conditions and provisos) taxes (subsection (1)), alimony and child support (subsection (5)), fines or penalties (subsection (7)), educational loans (subsection (8)), judgments arising from drunk driving cases (subsection (9)) and debts that existed when the debtor filed a prior bankruptcy case but were for specified reasons not discharged in that prior case (subsection (10)).

There are three other general categories of debt that are not discharged according to Section 523(a), which require some special attention. These are a variety of intentional tort claims, described in sub-sections (2), (4) and (6) of Section 523(a). They include (again, in very general terms) claims arising from false pretenses, fraud or use of false financial statements (subsection (2)); defalcation by a fiduciary, embezzlement or larceny (subsection (4)); and willful and malicious injury (subsection (6)). What is special about these intentional tort claims is that they will be discharged just like any other debt, unless the creditor files a complaint to determine their dischargeability in the bankruptcy court (which has exclusive jurisdiction) within a strict time limit of 60 days after the first meeting of creditors. 11 U.S.C. § 523(c); Bankr. Rule 4007(c). These jurisdictional and time restrictions do not apply to debts described in any sub-sections of Section 523(a) other than (2), (4) and (6). The dischargeability of a debt for taxes or alimony, for example, can be litigated in the state court or the bankruptcy court at any time. *See* R. Ginsberg, *Bankruptcy*, ¶¶ 11,351, 11,352 (1988).

But the immediate question here is, Does any sub-section of Section 523(a) say anything about scheduling debts? Section 523(a)(3) does talk about debts "neither listed nor scheduled." That is certainly the relevant section, but it requires closer examination.⁴

Section 523(a)(3) has two sub-parts, (A) and (B). Sub-part (A) deals with debts that are not the result of the intentional torts (fraud, larceny, wilful and malicious injury, etc.) that are described in subsections (2), (4), and (6). That is, a debt that is not a "(2), (4), or (6)" debt is covered by sub-part (A). This would include debts that are not excepted from discharge by any other subsection of Section 523, and it would also include debts that are excluded from the debtor's discharge by subsections (1), (5), (7), (8), (9) and (10). That is the scope of sub-part (A).

Assuming that we are dealing with debts that fall within the scope of sub-part (A), a debt must satisfy these conditions in order to fall within that exception to the debtor's otherwise all-inclusive discharge. The debt was "neither listed nor scheduled . . . *in time to permit . . . timely filing of a proof of claim*, unless the creditor knew about the case in time for such timely filing. . . ." 11 U.S.C. § 523(a)(3)(A) (emphasis added).

It is not enough, therefore, that the claim was not listed or scheduled. The key to understanding this subsection is the phrase "timely filing of a proof of claim."

This subsection protects only the creditor's right to file a proof of claim, nothing else. *Stark*, 717 F.2d at 324; *In re Crum*,

[99 BR 867]

48 B.R. 486, 490 (Bankr.N.D.Ill.1985); *In re Barrett*, 24 B.R. 682, 684 (Bankr.M.D. Tenn.1982). But a proof of claim serves only one purpose in a Chapter 7 case: it is the creditor's assertion of a right to participate in the distribution of the assets of the estate. In a case without assets to distribute the right to file a proof of claim is meaningless and worthless.⁵ "The unlisted creditor is not prejudiced by the debtor's failure to list him because he would not have received a distribution anyway." *In re Smolarick*, 56 B.R. 720, 723 (Bankr.W. D.Va.1986).

As Congress anticipated (see footnote # 5), the rulemakers did specify the time for filing claims, with appropriate exceptions for no-asset cases, in which filing a claim is useless. The basic rule in a Chapter 7 case is that a "proof of claim shall be filed within 90 days after the first date set for the meeting of creditors. . . ." Bankr. Rule 3002(c). But the general 90 day rule is subject to an exception that, "If notice of insufficient assets to pay a dividend was given to creditors pursuant to Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall notify the creditors of that fact and that they may file proofs of claim within 90 days after mailing of the notice." Bankr. Rule 3002(c)(5). Rule 2002(e) provides:

In a chapter 7 liquidation case, if it appears from the schedules that there are no-assets from which a dividend can be paid, the notice of the meeting of creditors may include a statement to that effect; that it is unnecessary to file claims; and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of claims.

This is the notice that was given to scheduled creditors here. Since no assets were ever discovered, no "further notice" was ever given. This 2002(e) notice, therefore, (saying "it is unnecessary to file claims") is the only notice about filing proofs of claim that unscheduled creditors missed.

Reading these rules together, there is no time limit on the filing of proofs of claim in no-asset Chapter 7 cases. "In a no-asset Chapter 7 case, there is never a claim filing period." *Karamitsos*, 88 B.R. at 123. "Because this is a no-asset Chapter 7 case, the time for filing a claim has not, and never will, expire unless some non-exempt assets are discovered." *Padilla*, 84 B.R. at 195-96. *See Stark*, 717 F.2d

at 324. Therefore, Section 523(a)(3)(A) is not applicable in a no-asset case, because there can never be a time when it is too late "to permit timely filing of a proof of claim." *See Crum*, 48 B.R. at 490 ("when a no-asset notice has been sent out and no claims bar date has been set, Section 523(a)(3)(A) has not been 'triggered'".)

Since Section 523(a)(3)(A) does not apply, the debts the Debtor seeks to add to the schedules are already discharged, even though they were not listed or scheduled, unless those debts fall within one of the other exceptions to discharge (such as, for example, the exceptions for taxes or child support). But if the debts do fall within one of those other exceptions, scheduling them will not change that fact. The Debtor cannot change the nature of a debt merely by listing it on a piece of paper.

Similarly, the application of sub-part (B) of Section 523(a)(3) is not affected, one way or the other, by reopening a closed case to permit amendment to the schedules of creditors. That sub-part deals with debts of the type described in subsections (2), (4), and (6) of Section 523(a). That is, the scope of sub-part (B) is limited to the intentional tort debts described in subsections (2), (4), and (6). As noted, those exceptions to discharge

[99 BR 868]

are treated differently in bankruptcy law. A creditor who claims an exception to the debtor's discharge based on subsections (2), (4), or (6) must, unlike other creditors with allegedly non-dischargeable claims, file a complaint to determine dischargeability in the bankruptcy court within a fixed period of time. Therefore, an intentional tort creditor who did not know about the bankruptcy case in time to file that complaint might be deprived of an important right. It is the purpose of subsection (B) of Section 523(a)(3) to protect against that risk.

In the achievement of that purpose, subpart (B) is applicable only where a debt of the type described in subsections (2), (4) or (6) was neither listed nor scheduled in time to permit the filing of a proof of claim or the filing of a complaint to determine dischargeability, and the creditor did not know about the case within that time. So subpart (B) protects two rights: the right to file a proof of claim and the right to obtain a determination of the dischargeability of a debt in those instances where that right might otherwise be lost by reason of the passage of time. *See, Padilla*, 84 B.R. at 196.⁶

Again, however, scheduling makes no difference to the outcome. "Reopening a case to list a creditor does not extend the time to file complaints to determine dischargeability. Either the creditor had actual, timely notice of the case or he didn't. Amending the schedules will not change that." *Karamitsos*, 88 B.R. at 123. The Court cannot extend the time to file complaints to determine dischargeability under Section 523(a)(2), (4) or (6) after that time has passed. *In re Van Cloostere*, 94 B.R. 131, 135 (Bankr.S.D.Ill.1988); *In re Lochrie*, 78 B.R. 257 (9th Cir. BAP 1987).

Reopening this case, therefore, will not accord the Debtor the relief she seeks. Scheduling the debts she wants to schedule will not affect whether or not those debts are discharged. Under Section 727(b), her discharge applies to all pre-petition debts except those that fall within one of the subsections of Section 523(a). Since scheduling a debt does not change the nature of a debt, and since Section 523(a)(3)(A) is inapplicable in a no-asset case, allowing this motion will not convert any non-dischargeable debt into a dischargeable debt.

There are cases, however, that support the granting of this motion, and they must be dealt with. Most important to this Court is the line of authority that begins with the Seventh Circuit's opinion in *Stark*. It is certainly true that *Stark* holds that, "In a no-asset

bankruptcy where notice has been given pursuant to 203(b) the predecessor to Rule 2000(e), a debtor may reopen the estate to add an omitted creditor where there is no evidence of fraud or intentional design." 717 F.2d at 324. But it is clear from the opinion in *Stark* that the Court assumed that the purpose that would be served by the reopening and addition of the omitted creditor was the discharge of that creditor's claim. The parties to *Stark* agreed to a statement of the case that said that the debtors "sought to have their estate reopened in order that the hospital's debt could be added and subsequently discharged." 717 F.2d at 323. The parties and the lower courts all dealt with the issues as if the debt would not have been discharged unless the case were reopened and the name of the creditor added to the schedules. The Seventh Circuit simply acted on that unchallenged assumption. Thus, the Court approved the district court's conclusion that "section 523(a)

[99 BR 869]

should not be mechanically applied to deprive the Debtor of a discharge in a no-asset case where there is no showing of fraud or genuine harm to the creditors, . . . and the bankruptcy court should exercise its equitable powers with respect to substance and not technical considerations that will prevent substantial justice. . . ." *Id.*

It is therefore clear that the holding in *Stark* is that a debtor should be allowed to reopen his or her case, in the absence of fraud or intentional design, in order to obtain the benefits of the debtor's bankruptcy discharge. The Court in *Stark* did not address or decide the question of whether reopening *was* necessary to obtain that benefit, but only assumed that it was. The Seventh Circuit itself recently held that, "A point of law merely assumed in an opinion, not discussed, is not authoritative." *Matter of Stegall*, 865 F.2d 140, 142 (7th Cir. 1989). This Court will not assume that the Seventh Circuit intended to direct bankruptcy courts to engage in exercises

in futility. Plainly, if a debtor can demonstrate that his or her discharge would not cover a particular debt unless the case were reopened to add that debt to the schedules, this Court would be compelled under *Stark* to grant that reopening. But in the absence of such a demonstration, *Stark* does not require the case to be reopened.⁷

There is, however, at least one decision that expressly reaches a conclusion different than this Court's, even after consideration of the language of the relevant Code provisions. In *In re Godley*, 62 B.R. 258, 261-62, n. 1 (Bankr.E.D.Va.1986), the court decided that a "technical reading of § 523(a)(3) would seem to require the conclusion that no amendment to the schedules would be necessary at all, because the creditor is protected under subsection 523(a)(3)(A) in that the creditor has not lost the right to timely file a claim if the Rule 2002(e) notice was given to all creditors and issues relating to § 523(a)(2), (4) or (6) can be heard in the complaint under § 523(a)(3)(B)." That is certainly this court's "technical reading." The *Godley* court, however, stated that it did not need to adhere to this "technical reading" because to do so "would allow a debtor to omit a creditor in a no-asset case. . . ." *Id.* The court concluded that "the Bankruptcy Code places a premium on scheduling all creditors, and this apparent aberration in the Bankruptcy Code regarding the scheduling of creditors and the obtaining of a discharge should not allow a debtor to intentionally omit a known creditor." *Id.*

Thus, although Congress in Section 523(a)(3) dealt only with the effect of a debtor's conduct, the *Godley* court reads into that provision, for policy reasons, a special exception based on the debtor's intent. The fundamental problem with the *Godley* court's approach, of course, is that it is for the legislative branch, and not the courts, to make such policy choices and to define exceptions to the debtor's discharge. And the clear language of Section 523(a)(3) is not an aberration, but represents a Congressional policy choice.

Congress could have excepted from the debtor's discharge debts that were omitted, intentionally or otherwise, from the schedules. Congress might simply have continued pre-Code law, which was much stricter than the present § 523(a)(3) in that it excluded a debt from discharge "if the objecting creditor did not have either actual or constructive knowledge of the bankruptcy petition in time to

[99 BR 870]

permit meaningful participation in the bankruptcy proceeding." *In re Barrett*, 24 B.R. 682, 683 (Bankr.M.D.Tenn.1982). Instead, the legislative history shows that Congress expressly overruled that prior law and created the narrow exception found in § 523(a)(3) that protects only the rights to file claims and certain complaints, but not any other rights to participation in the case. *Id.*

Moreover, even as a policy matter, the *Godley* court's concern, while valid, is inappropriately dealt with in the context of the dischargeability of a single debt under Section 523. As *Godley* itself acknowledges, a creditor omitted from the schedules (whether intentionally or not) in a no-asset case has not been harmed. Yet under *Godley*, a creditor lucky enough to have been intentionally omitted from the schedules gets the windfall of an exception from discharge not available to other creditors.

The policy problem with *Godley's* analysis is that it applies an inappropriate remedy to the wrong committed by a debtor who intentionally falsifies schedules. That wrong is not merely directed against a single creditor, but against all creditors, as well as the court and the process of bankruptcy administration. That sort of a problem is not dealt with by Congress or, usually, by the courts within the framework of Section 523 exclusions of particular debts from the scope of the discharge. Rather, it is dealt with in the context of Section 727, which describes both the

discharge and the circumstances under which that discharge can be entirely denied or revoked because of the debtor's misconduct. A debtor who has obtained his discharge on the basis of false schedules should be required to explain why that discharge should not be revoked under 11 U.S.C. § 727(d) on the ground that it was obtained through fraud. *See Barrett*, 24 B.R. at 865.⁸

Finally, although this opinion disposes of the present motion, it is possible the parties will continue to have a dispute concerning the dischargeability of one or more of the debts listed in the Debtor's motion. There are three ways to litigate dischargeability after a case is closed. First, if a creditor pursues a lawsuit on the claim, the debtor can assert the bankruptcy discharge as an affirmative defense and the court with jurisdiction over that lawsuit can decide whether the debt falls within any of the exceptions to discharge. Second, under Bankruptcy Rule 4007(b) either the Debtor or the creditor can move to reopen this case for the purpose of filing a complaint to determine dischargeability. Third, the Debtor can bring an action in this Court to enforce the discharge injunction against a creditor attempting to collect discharged claims, which is contained in 11 U.S.C. § 524(a). The virtue of any of these procedures, as opposed to a motion to reopen to amend schedules, is that it will focus on the real dispute (if there is a real dispute) between the parties—the dischargeability of the debt.

For the foregoing reasons, an Order will be entered denying the Debtor's motion to reopen this case.

Notes:

¹ See Bankr. Rules 2002(a), (e); 4007(c).

² 11 U.S.C. § 350(a) provides that, "After an estate is fully administered and the court

has discharged the trustee, the court shall close the case."

³ *Padilla* recognized a limited exception to this general rule. The issue to which that exception pertains is discussed in footnote 6, below.

⁴ Section 523(a)(3) provides:

A discharge under section 727 . . . does not discharge an individual debtor from any debt—

(3) neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request.

⁵ Congress recognized that a proof of claim would be unnecessary in a no-asset case. It permitted, in 11 U.S.C. § 501, the filing of proofs of claims "in a liquidation case where there will be a distribution of assets to the holders of allowed claims. In other instances, such as in no-asset liquidation cases . . . filing of a proof of claim may simply not be necessary. The Rules of Bankruptcy Procedure and practice under the law will guide creditors as to when filing is necessary and when it may be dispensed with." H.R. Rep. No. 95-595 95th Cong. 1st Sess. 351 (1977); S. Rep. 95-989, 95th Cong., 2nd Sess. 61 (1978), U.S. Code Cong. & Admin. News 1978, pp. 5787, 5847, 6307 (legislative history to Section 501 of the

Bankruptcy Code, which governs the filing of proofs of claims).

6 Although this court generally agrees with the analysis in *Padilla*, it disagrees with that court's conclusion that dischargeability under Section 523(a)(3)(B) must be determined by the bankruptcy court. *Padilla* reaches that conclusion because Section 523(c) requires that the Bankruptcy Court, and no other Court, determine dischargeability under subsections (2), (4), and (6). That is certainly the general rule of exclusive jurisdiction over subsections (2), (4) or (6) matters. But Section 523(c), by its own terms, does not apply to Section 523(a)(3)(B) claims. Therefore, the exclusive jurisdiction provisions of Section 523(c) are not applicable to the issue of dischargeability under Section 523(a)(3)(B). The time limitation of Bankruptcy Rule 4007(c) is also inapplicable, since that Rule applies only to complaints under Section 523(c), not to complaints under Section 523(a)(3)(B). In effect, a debtor who failed to list a creditor loses the jurisdictional and time-limit protections of Sections 523(c) and Rule 4007(b) with respect to that creditor.

7 *Stark* has been followed in many other cases in which the discharge issue was similarly not addressed, but merely assumed. See, e.g., *In re Rosinski*, 759 F.2d 539, 542 (6th Cir.1985) ("the *Stark* Court found as a matter of law that a debtor's right to reopen a case in order to obtain a discharge of a debt is paramount under the Bankruptcy Code."); *In re Soult*, 88 B.R. 801, 804 (Bankr.S.D.Ohio, 1988) ("the paramount policy being advanced by *Rosinski* and *Stark* is the bankruptcy debtor's right to obtain a discharge of all pre-petition obligations not otherwise excepted by statute from the effect of the discharge.") *In re Smith*, 68 B.R. 897, 899 (Bankr.N.D.Ill.1987) ("A debtor's goal to be discharged of a debt by adding additional creditors is a proper purpose for a bankruptcy court to reopen a closed case `to accord relief to the debtor.'") All of these cases, and most of the others that have followed *Stark*, have, like *Stark*, simply

assumed, without discussing or deciding, that it is necessary to add creditors to the schedules in order to include those creditor's claims within the scope of a debtor's discharge. If that assumption is incorrect, as this Court believes it to be, those decisions are without any rational foundation, and are no more persuasive than *Stark* is controlling.

8 *Godley* does suggest this course of action, but then rejects it on the theory that a creditor might not learn about the case until the time to file a complaint to revoke the discharge had passed. Even without considering the possibility of tolling that time period, that hypothetical situation, which will seldom arise in reality, is little reason to disregard the plain meaning of the Bankruptcy Code.

Judge Cassling's Zoom Rules and Tips

1. These rules and tips apply to all court proceedings, including the motion calls. There are additional procedures and rules which must be followed for Zoom trials. Those procedures and rules are contained in the pretrial order which will be issued approximately a week before the trial is scheduled to start. They can also be found on the Court's website.

2. Ability of the public to observe the proceedings. A court hearing/trial is a public proceeding. Thus, any party interested in the case may attend or observe the Zoom hearing. Parties to the case may share the Zoom ID and passcode with any interested persons who wish to listen in. The information will also be posted on the Court Calendar which is located on Judge Cassling's website. Persons who are only observing must turn their cameras and microphones off at all times.

3. Use of video/audio. Turn your video/audio on only if you are participating in the hearing at issue. Only attorneys who are appearing in order to represent parties, pro se parties, and witnesses who are testifying may turn on their cameras and microphones during a court hearing. The video feed will display only the parties who will actually be participating—the Judge, the witness, the lawyer asking the questions, and any parties entitled to appear or object. Other attorneys assisting in the case must have their cameras off and their microphones muted.

4. Use of headsets. We strongly recommend that you use a headset or earbuds *with a microphone* for all Zoom hearings. Using a separate headset microphone instead of a built-in computer microphone reduces distortion, eliminates background noise, and ensures that

everything you say will be picked up. The result will be a more accurate record of the proceeding.

5. Avoid cross-talk where possible. Slow down and do not interrupt. It is vital that everyone slow down when speaking and not interrupt each other. Cross-talk will prevent the Court from understanding what is being said and will prevent the Court Reporter from making an accurate transcript. If repeated, willful, violations of this rule occur, the Court may sanction the offending party.

6. Early opening of the virtual courtroom. Zoom meeting rooms will be opened to the public thirty minutes prior to the scheduled court hearing. Attorneys may use the virtual courtroom during this time to conduct business (i.e, discussion with the trustee's office or opposing counsel) just as they would if appearing in person. Parties engaged in such discussions should be aware that, as soon as the court reporter enters a meeting room, the audio will be recorded.

7. Courtroom dress and decorum. You are reminded that, even though your matter will be heard in a virtual courtroom, parties and their attorneys are expected to conduct themselves with the same formality and decorum as they would if the matter were being heard in the Court's regular courtroom. This requirement includes the obligation, particularly for attorneys, to dress with the same formality and attire as they would if the proceedings were conducted in the Court's regular courtroom. If you are having trouble with the video or audio or other technical difficulties, please speak up immediately if possible. Otherwise, contact the courtroom deputy by email or

phone as soon as possible. Though glitches are expected, they do not always occur on the Court's end, so we will not necessarily know if your Internet goes down unless you tell us.

8. Photos/recordings. No photographs or recordings of the proceedings are permitted. During your presentation or testimony, cell phones must be turned off. More specific rules governing witnesses' access to cellphones during their testimony may be found in the Court's pretrial order for Zoom trials. The court reporter who is present for the hearing will be preparing the only official record of the proceedings.

9. Breaks during the course of a trial. If people want to take breaks during the trial, they should just ask for a break or raise their hand if someone else is speaking. If it is just a simple break, participants should turn off their video and audio during the break and then turn them back on when the trial commences again.

10. Breakout rooms for trials. If any party wants to be placed in a breakout room so that he or she may speak separately to another participant, the party should ask the Court, and, if appropriate, the courtroom deputy will arrange for the breakout and place the parties in the correct breakout room. For scheduled trials, breakout rooms will be set up in advance for the participating parties. Court personnel will also have a chambers breakout room.

Judge Baer's Zoom Trial Rules and Tips

General Matters

1. “Listening in” on the proceedings. The trial is a “public proceeding.” Thus, any party interested in the case may “listen in” to the Zoom trial. Parties to the case may share the Zoom ID and passcode with interested parties who wish to “listen in.” The information will also be posted on the Court Calendar which is located on Judge Baer’s website. Parties who “listen in” must have their cameras off and their microphones muted at all times.
2. Video/audio on. Only parties who are expected to call witnesses or pose objections at the trial and the witnesses who are testifying should have their cameras and microphones turned on during the trial. All others should turn their cameras off and mute their microphones. The video feed will show only the parties who will actually be participating—the Judge, the witness, the lawyer asking the questions, and any parties entitled to object. Other attorneys assisting in the case must have their cameras off and their microphones muted.
3. Slow down and do not interrupt. It is vital that everyone slow down when speaking and not interrupt each other. This is even more key now than when proceedings are held in the courtroom. Generally, when two people speak at the same time, nothing is heard from either. Thus, anything that is said will have to be repeated, making the trial even longer.
4. Regular breaks. If people want to take breaks during the trial, they should just ask for a break or raise their hand if someone else is speaking. If it is just a simple break, participants should turn off their video and audio during the break and then turn them back on when the trial commences again.
5. Breakout rooms. If any party wants to be placed in a breakout room so that he or she may speak separately to another participant, the party should ask the Court, and, if appropriate, the courtroom deputy will arrange for the breakout and place the parties in the correct breakout room. Breakout rooms will be set up in advance for the plaintiff and the defendant. Court personnel will also have a chambers breakout room.
6. Technical information. The Court must be provided with a list of cell phone numbers of all parties expected to participate in the trial and descriptions of the types of technology (e.g., Mac, PC, I-pad) that each party will be using at trial. Such a list will allow Court personnel to immediately contact and provide appropriate technical assistance to any party experiencing technical issues during the trial.
7. Courtroom behavior. Although this will be a virtual trial, parties are expected to conduct themselves in the same way that they would if we were in person in the courtroom. This includes appropriate formality and attire. While I love cats and babies, please try to avoid their participation in the trial if at all possible. In addition, if you are having trouble with the video or audio or other technical difficulties, please speak up immediately. Though glitches are expected,

they do not always occur on the Court's end, so we will not necessarily know if your Internet goes down until you tell us.

8. Photos/recordings. No photographs or recordings of the proceedings are permitted. You may have your cell phones or similar devices with you during the trial, but they must be muted, and you may not use them to take photographs or record any part of the proceedings. A court reporter will be present, and she will be preparing the only official record of the proceedings. While the Zoom bot will be engaged as a backup for the court reporter, you will not be provided access to that recording.

Witnesses

9. Witness protocol. When a party is called to testify, the witness must generally be in a room by himself or herself with no papers in front of the witness other than the filed exhibits. The witness will be sworn in by the courtroom deputy via Zoom video and audio. Then, while under oath, the witness will be asked to testify as to where the witness is located, who is in the room with the witness, and whether the witness has any papers in front of him or her. The witness will also be asked to tell the Court if, at any time, someone who was not initially there enters the room. If witnesses wish to have counsel with them in person, that fact must be disclosed to the Court, and the parties must maintain social distance in the room.

10. Violation of witness rules. If, during the course of a witness's testimony or otherwise, it is discovered that (a) the witness is being coached or otherwise communicated to, (b) there is an undisclosed person in the room with the witness, or (c) the witness has notes in front of him or her that have not been disclosed, the Court may disqualify the witness from testifying, enter sanctions, or take other appropriate action within the Court's discretion.

11. Excluding witnesses. At the start of the trial, the parties must inform the Court if they wish to have testifying witnesses excluded from the courtroom. If so, the Court will decide whether the request is appropriate pursuant to the applicable federal rules. Either excluded witnesses will be placed in a Zoom waiting room until it is time for them to testify, or they should be directed not to dial in to the Zoom trial until they are expected to testify.

12. Objections. If parties wish to object to questions during examination, they should simply state "objection" orally and physically raise their hand. When the word "objection" is stated and/or the hand is raised, all parties must stop talking. At that point, the Court will invite the objecting party to state the legal basis for his or her objection; may, at its discretion, solicit a response from the other party; and then rule.

13. Sidebar. If a lawyer needs a sidebar with the Court and opposing counsel during a witness's testimony, the lawyer should just ask. We can arrange for the witness to be placed in the waiting room while the sidebar takes place.

Exhibits

14. Filing and sharing exhibits. Exhibits must all be filed on the Court's docket. The courtroom deputy will serve as host for the trial and thus be the only person who has the right to

“screen share.” If a party wishes to have an exhibit shared on the screen, the deputy will be the one who will retrieve the document from the docket and share the document with the trial participants. Exhibits must be marked with page numbers that will allow the deputy to readily and quickly find the appropriate pages in each exhibit.

15. Hardcopy exhibits. In addition to filing exhibits electronically, the parties may provide hard copies of the exhibits to each other and the witnesses. One full hardcopy set of the exhibits must be delivered to the Judge via the Bankruptcy Court mailroom, 219 S. Dearborn Street, Room 717, on the date required in the Court’s pretrial order.

16. Confidential exhibits. If the parties designate as exhibits documents that are marked as confidential, a redacted set of the confidential documents should be filed on the public docket, and a separate, unredacted version of the documents should be filed under seal with the Court pursuant to Local Rule 5005-4. The courtroom deputy will be directed to “screen share” only the redacted version of confidential exhibits. The Court does not need hard copies of the redacted exhibits. In the hardcopy set of exhibits to be delivered to the Court, the confidential documents should be provided in separate sealed envelopes marked as confidential. Whenever witnesses are expected to testify on the record about confidential information, counsel must provide advanced notice so that the Court can determine whether arrangements need to be made to protect that information from anyone listening in during the trial.

17. Impeachment/rebuttal documents. If a lawyer wants to use a document that is not a marked exhibit for impeachment or rebuttal, he or she must send the relevant document via email to the courtroom deputy who will then share the document on the screen as directed by the lawyer.

18. Deposition transcripts. If a lawyer anticipates using a deposition transcript for impeachment, he or she may either designate the transcript as an exhibit and file it with the other exhibits ahead of the trial or have the transcript downloaded and readily available to provide to the courtroom deputy to be shared during the trial.

SESSION TWO

Remote Depositions and Citation Examinations

S. Ross Suter

VP Litigation Solutions, Magna Legal Services

Dr. Daniel Wolfe

Senior Director of Jury Consulting
Magna Legal Services

Remote Depositions & Virtual Witness Prep

Practical and Logistical Considerations

Daniel Wolfe, J.D., Ph.D.

dwolfe@magnals.com

312-925-0333

REMOTE ONLINE PLATFORMS



DEPOSITIONS



HOW DOES IT WORK?



FAIL-SAFE BACKUP OPTIONS



iPad
& Stand



Bluetooth
Speaker



Conference
Phone



Internet Hotspot



Extension
Cable



These flight packs are shipped on demand,
often to last-minute depositions.

FACTORS TO CONSIDER

- > Security/encryption
- > Number of participants
- > Ability to display and annotate exhibits
- > Type of tech support available from start to finish
- > Ability to record sessions/transcribe
- > Availability to test/practice in advance of your deposition
- > Chat function and breakout rooms

OTHER CONSIDERATIONS

> Video Recording

- Decision should be made in advance and included in notice
- Video depositions generally require an official videographer
- Should be formal agreement that no one records (detectable)

> Remote Swearing In of the Witness

- The reporter does not have to be in the same room as the witness
- Many states have relaxed the rules but if not the parties can agree

OTHER CONSIDERATIONS

> Exhibits

- **Organizing:** Locally, online, database
- **Marking:** Court reporter or exhibit technician
- **Exchanging:** Sharing remotely v. sending in advance
- **Displaying:** Self, exhibit technician, court reporter

> Objections

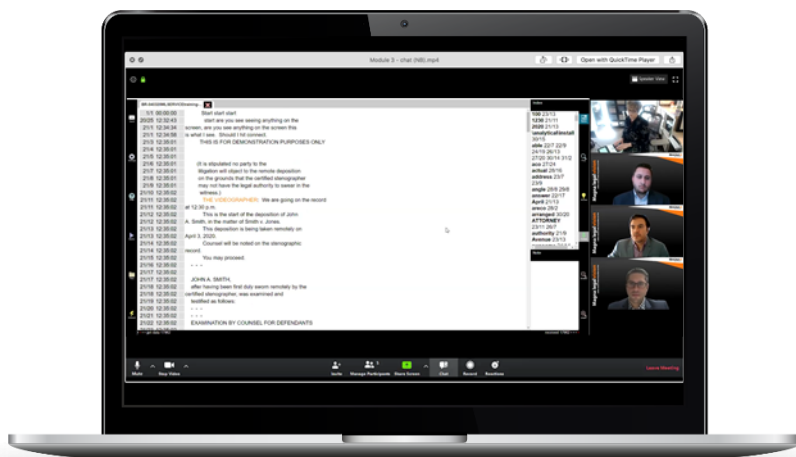
- Prepare witness on how objections will work
- Pausing before answering becomes even more important
- Waiving standard objections till trial

Legal Videographer v. Native Record



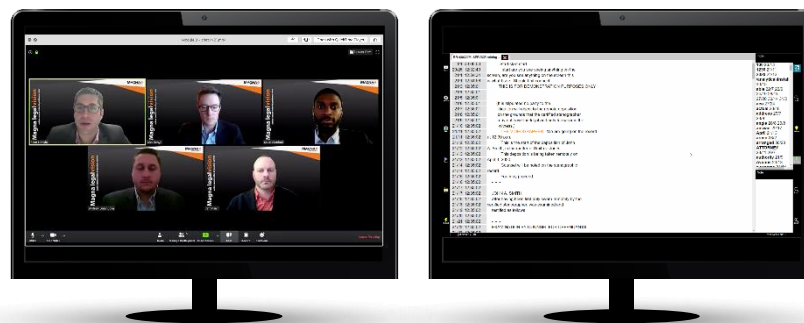
Realtime Court Reporting (Live Note)

OPTION 1



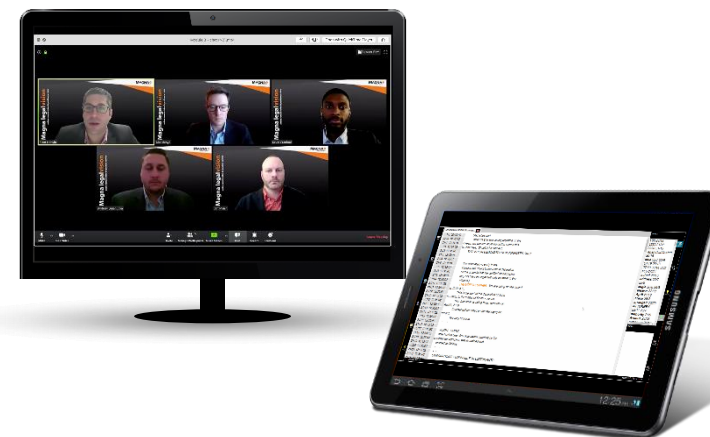
Single Screen

OPTION 2



Dual Monitors

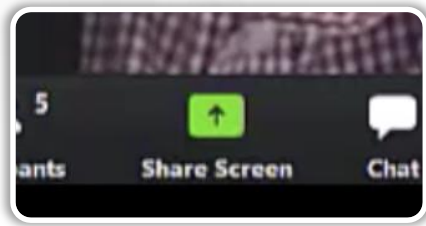
OPTION 3



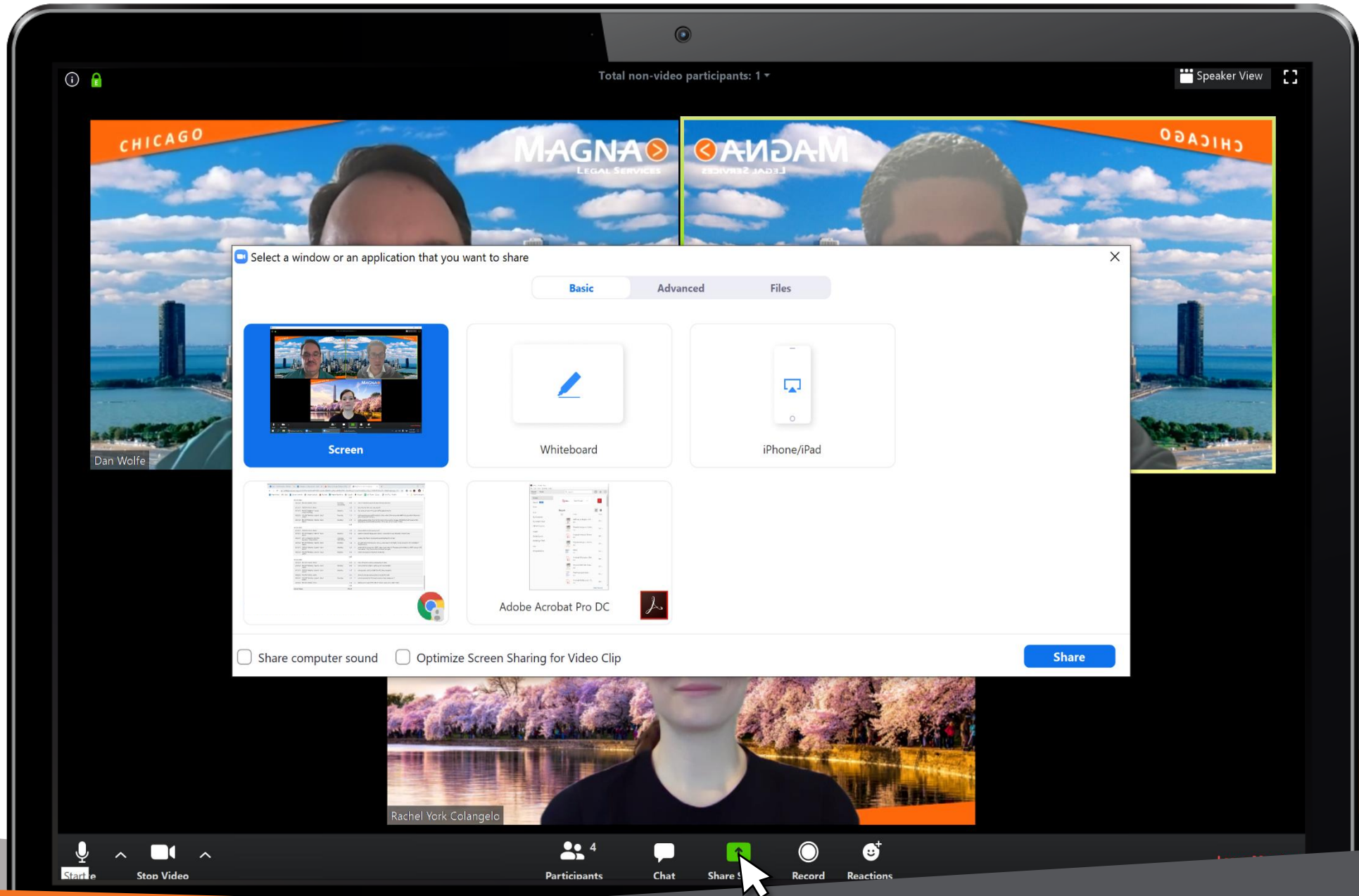
Monitor & Tablet

MANAGING AND DISPLAYING YOUR EXHIBITS

- > Do it yourself or utilize a colleague using the built-in screensharing function
- > Document Manager to display exhibits using a professional presentation software
- > Utilizing online document repository



Share Screen Function



United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 05-00611 WHA

Plaintiff,

v.

ORDER RE CAPITALIZATION
OF DEFENDANTS' NAMES

DALE SCOTT HEINEMAN; KURT F.
JOHNSON; THE DOREAN GROUP;
WILLIAM JULIAN; FARREL J.
LECOMPTE, JR.; SARA J. MAGOON; and
CHARLES DEWEY TOBIAS.

Defendants.

Defendants Dale Scott Heineman and Kurt F. Johnson request to be set free and to be dismissed as defendants because they spell their names "Dale Scott Heineman" and "Kurt F. Johnson," whereas the indictment sometimes spells their names with only upper-case letters, i.e., "DALE SCOTT HEINEMAN" and "KURT F. JOHNSON." Heineman and Johnson alternatively ask for an evidentiary hearing on their identities or for an order declaring that they are the defendants and requiring the indictment to be amended to change the capitalization style. The disagreement over capitalization provides no basis for any of the relief requested. The requests for relief are **DENIED**.

Heineman and Johnson claim that "DALE SCOTT HEINEMAN" and "KURT F. JOHNSON" do not identify them and denote instead two "Cestui Que Trusts." They argue

* In reality, a cestui que trust is simply the beneficiary of a trust. Black's Law Dictionary (8th ed. 2004.)

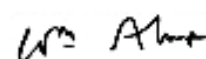
United States District Court
For the Northern District of California

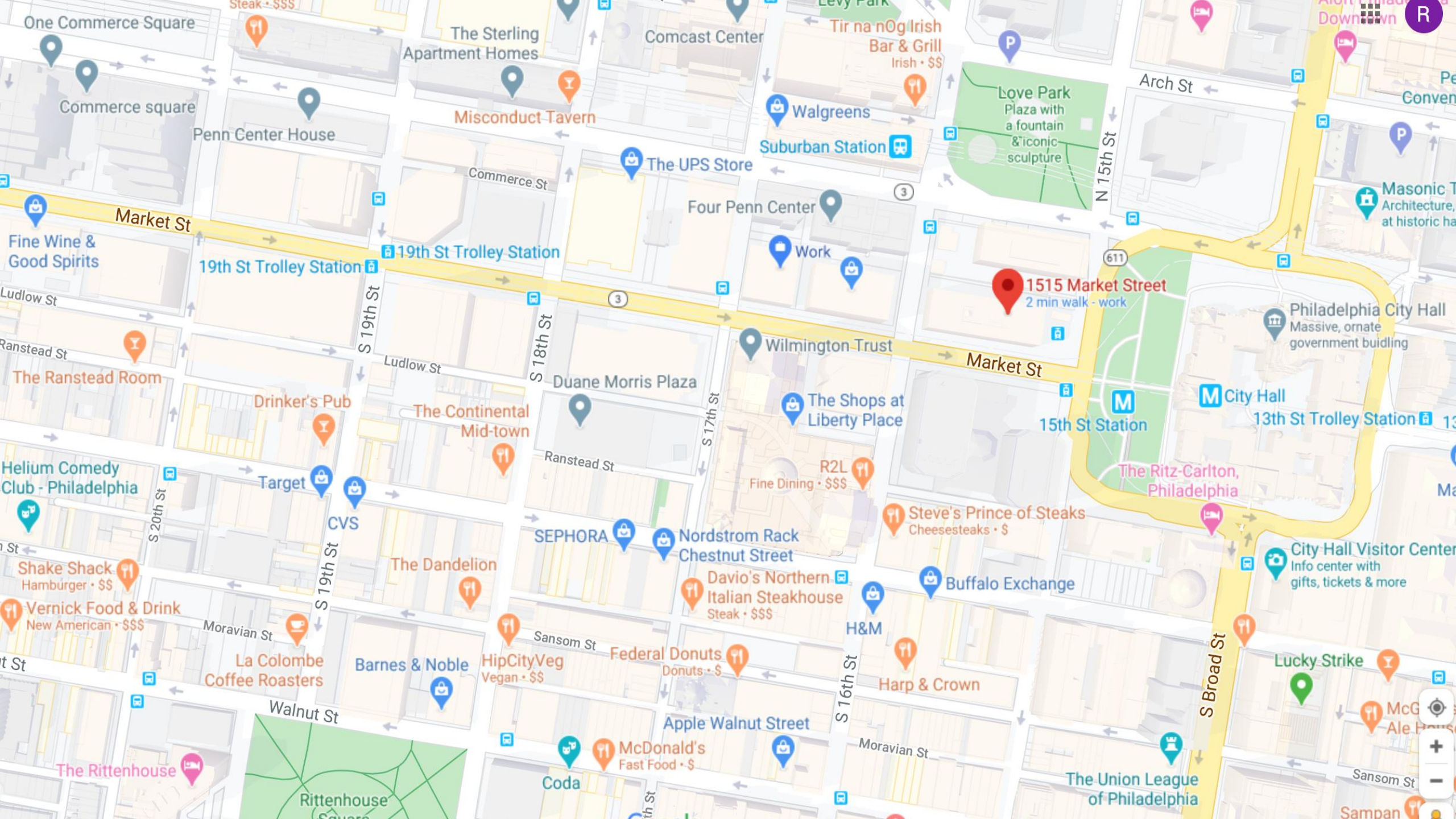
therefore that they are being held for the alleged crimes of the cestui que trusts, in violation of the Due Process Clause and the Sixth Amendment (Br. 2, 5). Defendants cite to no authority in making their arguments. The government has remained constant in its position that the defendants named in the indictment include Heineman and Johnson.

Defendants vigorously have persisted in this "misnomer" argument since they first appeared before the Court. It is a creative endeavor based on a formalistic but fanciful distinction. The emptiness of this argument must be clear by now. The Court gives the indictment a reasonable construction, one that interprets the defendants' names — whether spelled using only upper-case letters or using both upper- and lower-case letters — to designate the men who filed the instant request for relief. It is time that defendants turned their considerable intelligence toward viable defense strategies.

IT IS SO ORDERED.

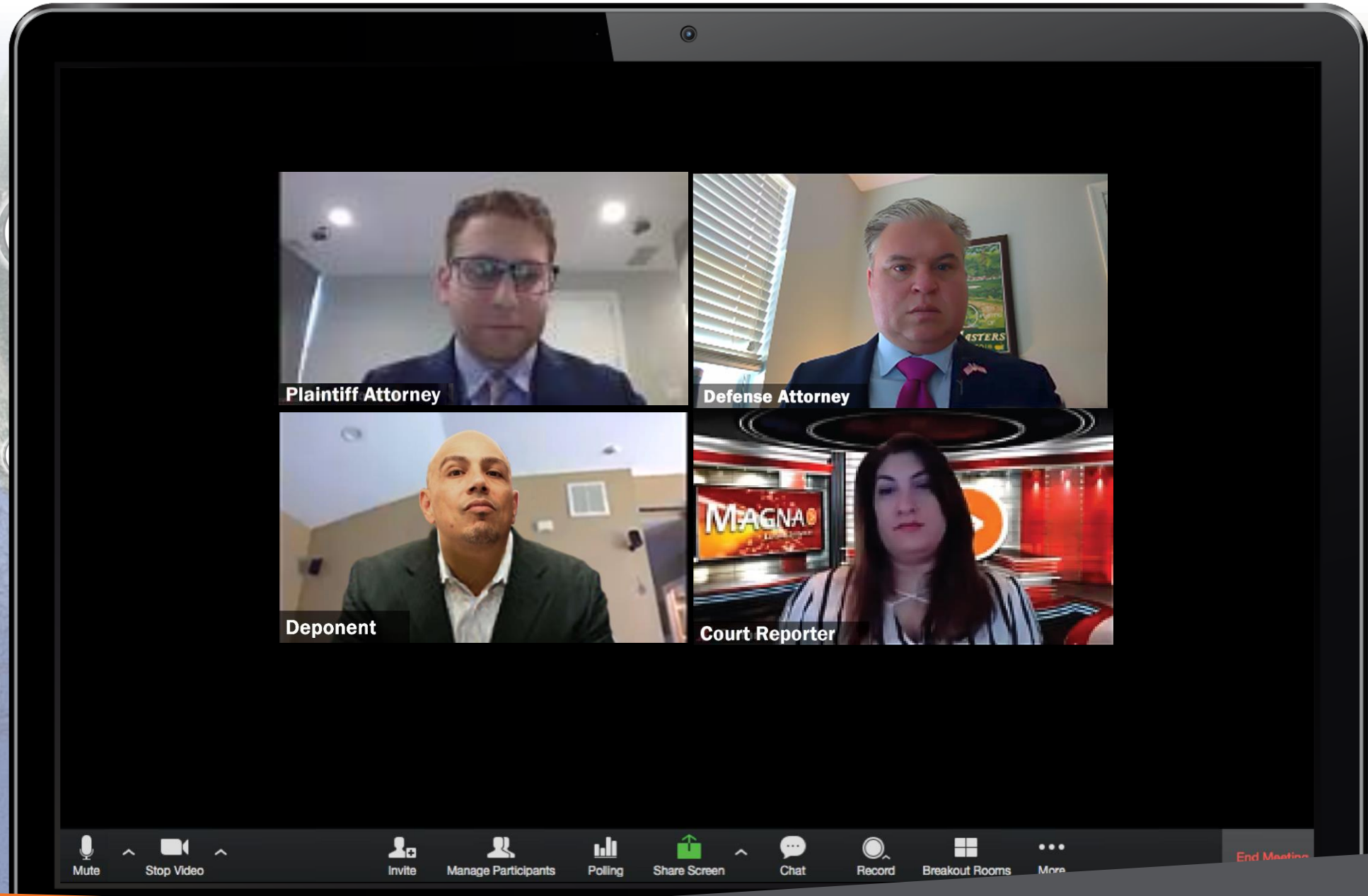
Dated: June 6, 2006


WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE



Moving Camera View

Initial Log-In



Witness Deposition

Deponent

Mute Stop Video Invite Manage Participants Polling Share Screen Chat Record Breakout Rooms More

End Meeting

Swearing In

Deponent

Defense Attorney

Plaintiff Attorney

Court Reporter

Mute Stop Video Invite Manage Participants Polling Share Screen Chat Record Breakout Rooms More End Meeting

Document Callouts

The screenshot displays a Zoom meeting window. On the left, a video feed shows a man with a beard and mustache, wearing a dark suit and light blue shirt, with a 'Magna Tech.com' logo in the bottom left corner. On the right, two video feeds are visible: the top one shows a man with a shaved head in a dark suit, and the bottom one shows a man with glasses and a dark suit, labeled 'Plaintiff Attorney'. The central area of the screen displays a deposition transcript with the following text:

6 from restaurant experience, but we were told.
 7 Q And what, by the way what is your background in
 8 restaurants? Buffalo Wild Wings, Hooters, any other place?
 9 A I worked at a really small Asian Cuisine restaurant
 10 in Louisville where I'm from when I was younger as well.

Below the transcript, a list of participants is visible, including 'Card L Court Reporting and Video Service'. At the bottom of the screen, the Zoom interface shows icons for Mute, Stop Video, Invite, Manage Participants, Polling, Share Screen, Chat, Record, Breakout Rooms, and an 'End Meeting' button.

Deposition Views

The screenshot displays a video deposition interface with four participants in a grid layout. The main window shows a large video feed of the **Expert Witness**, a man in a suit and tie. Below his video is a technical drawing of a mechanical part with dimensions. To the right, three smaller video feeds show the **Plaintiff Attorney**, **Defense Attorney**, and **Magna Tech.com** representative. The **Plaintiff Attorney** is holding a document. The **Defense Attorney** is looking towards the Expert Witness. The **Magna Tech.com** representative is looking at the camera. At the bottom, a control bar includes icons for Mute, Stop Video, Invite, Manage Participants, Polling, Share Screen, Chat, Record, Breakout Rooms, and More. An **End Meeting** button is located on the far right of the control bar.

Expert Witness

Plaintiff Attorney

Defense Attorney

Expert Witness

Magna Tech.com

Mute Stop Video Invite Manage Participants Polling Share Screen Chat Record Breakout Rooms More End Meeting

Deposition Views

SPREAD Escambia County...

#	First Name	Last Name	Gender	Race	Age	Education	Employment	Marital Status	Occupation	Employer	Spouse Occupation
1	Ladonna	Gracia	F	AA	41	SC	PT	DIV	Event Product Demo	Advantage Solutions	US Army

Age	Education	Employment	Marital Status	Occupation	Employer
41	SC	PT	DIV	Event Product Demo	Advantage Solutions
49	PG	RT	M	Prev Rehab Counselor	Prev State of FL
33	HS	FT	NM	Landscaper	Jeff Bain LLC
36	HS	FT	M	Construction	Marsh Insulations LLC
27	CG	FT	NM	Student Aviator	US Navy
39	HS	PT	NM	Landscaper	Self
70	SC	FT	M	Check in Person	Macus Pointe Golf Club

27	Jeremy	Tucker	M	AA	41	SC	PT	M	Proctor	Ready, Set Go Technology Group	Homemaker
28	Nicole	Byrd	F	AA/C	43	SC	PT	M	Commercial Cleaner	Office Pride	SalesMgt / Auto Zone
29	Jesse	Forst	M	C	38	CG	FT	NM	Construction Deck Builder	Certified Construction	N/A

Plaintiff Attorney

Defense Attorney

Expert Witness

Magna Tech.com

Mute Stop Video Invite Manage Participants Polling Share Screen Chat Record Breakout Rooms More End Meeting

Deposition Views

SPREAD Escambia Court...

#	First Name	Last Name	Gender	Race	Age	Education	Employment	Marital Status	Occupation	Employer	Spouse Occupation
1	Ladonna	Gracia	F	AA	41	SC	PT	DIV	Event Product Demo	Advantage Solutions	US Army

Age	Education	Employment	Marital Status	Occupation	Employer
41	SC	PT	DIV	Event Product Demo	Advantage Solutions
49	PG	RT	M	Prev Rehab Counselor	Prev State of FL
33	HS	FT	NM	Landscaper	Jeff Bain LLC
36	HS	FT	M	Construction	Marsh Insulations LLC
27	CG	FT	NM	Student Aviator	US Navy
39	HS	PT	NM	Landscaper	Self
70	SC	FT	M	Check in Person	Macus Pointe Golf Club

27	Jeremy	Tucker	M	AA	41	SC	PT	M	Proctor	Ready, Set Go Technology Group	Homemaker
28	Nicole	Byrd	F	AA/C	43	SC	PT	M	Commercial Cleaner	Office Pride	SalesMgt / Auto Zone
29	Jesse	Forst	M	C	38	CG	FT	NM	Construction Deck Builder	Certified Construction	N/A

Plaintiff Attorney

Defense Attorney

Expert Witness

Magna Tech.com

Mute Stop Video Invite Manage Participants Polling Share Screen Chat Record Breakout Rooms More End Meeting

Deposition Views

The screenshot displays a deposition software interface with several overlapping spreadsheets. The primary spreadsheet in the foreground contains the following data:

Age	Education	Employment	Marital Status	Occupation	Employer
41	SC	PT	DIV	Event Product Demo	Advantage Solutions
49	PG	RT	M	Prev Rehab Counselor	Prev State of FL
33	HS	FT	NM	Landscaper	Jeff Bain LLC
36	HS	FT	M	Construction	Marsh Insulations LLC
27	CG	FT	NM	Student Aviator	US Navy
39	HS	PT	NM	Landscaper	Self
70	SC	FT	M	Check in Person	Macus Pointe Golf Club

Other visible spreadsheets include:

- SPREAD Escambia Court...**: A spreadsheet with columns for First Name, Last Name, Gender, Race, Age, Education, Employment, Marital Status, Occupation, Employer, and Spouse Occupation. It contains one row of data for Linda...
- INTERVIEW LOG**: A spreadsheet with columns for Date, Time, Interviewer, Deponent, and Notes. It contains several rows of data.
- Deposition Log**: A spreadsheet with columns for Date, Time, Deponent, and Notes. It contains several rows of data.
- Deposition Schedule**: A spreadsheet with columns for Date, Time, Deponent, and Notes. It contains several rows of data.
- Deposition Checklist**: A spreadsheet with columns for Date, Time, Deponent, and Notes. It contains several rows of data.
- Deposition Summary**: A spreadsheet with columns for Date, Time, Deponent, and Notes. It contains several rows of data.

At the bottom of the screen is a control bar with the following icons and labels:

- Mute
- Stop Video
- Invite
- Manage Participants
- Polling
- Share Screen
- Chat
- Record
- Breakout Rooms
- More
- End Meeting

Sharing Exhibits

The screenshot displays a Zoom video conference interface. The main window shows four participants in a 2x2 grid:

- Plaintiff Attorney**: A man with glasses and a suit, holding a document.
- Defense Attorney**: A man in a suit, partially visible on the right.
- Magna Tech.com**: A man with a beard and mustache, wearing a dark jacket, with a Magna logo in the background.
- Court Reporter**: A man in a suit, partially visible on the right.

On the right side, a **Zoom Group Chat** window is open, showing a list of messages:

- From Woodrow DeCasere to Everyone: 08:40 AM
I got marks
- From Me to Everyone: 08:41 AM
got it
- From Andrew Lunanuova to Everyone: 08:41 AM
received
- From Matt Richter to Everyone: 08:41 AM
got it
- From Dan Poletti to Everyone: 08:41 AM
got it
- From Ben Scrimalli to Everyone: 08:41 AM
[Attachment: Slide3.PNG, 47.35 KB]
Download
- From Andrew Lunanuova to Everyone: 08:42 AM
got bens
- From Kevin Cranford to Everyone: 08:42 AM
[Attachment: MLV with FAQ.PDF, 3.95 MB]
Download
- From Kevin Cranford to Everyone: 08:42 AM
able to send also
- From Me to Everyone: 08:42 AM
we need to make sure they realize the attorney will download and not just "see" the document

At the bottom of the Zoom window is a toolbar with icons for Mute, Stop Video, Invite, Manage Participants, Polling, Share Screen, Chat, Record, Breakout Rooms, and More. The **End Meeting** button is visible in the bottom right corner.

EFFECTIVE PRACTICE TIPS

Find a Quiet Location



Avoid background noise

- Ringing telephones
- Interruptions from non-participants in your location

Choose an Appropriate Background



Choose a backdrop in where there is not:

- Distracting scenery or light behind you
 - Particularly important for video depositions
 - Lighting and camera considerations

Present as though you are “in person”



- Avoid temptation to be too relaxed or casual
 - Witness may be lulled into false sense of security
- Prepare, dress, & present as formally as if in-person deposition
 - Dress for success

Look at the Camera



- Webcam is the “eye” of the observer
- Look into the camera as often as possible
 - Stay focused & remain attentive
- Limit movement
 - Everything you do is visible (and recorded)

Test & Practice



- Advance technical tests
- Practice in same platform & setting as the actual deposition
 - Ease anxiety
 - What to do if connection/audio issues
 - How to handle objections (pausing)

LIGHTING & CAMERA ANGLE



TOO CASUAL



PREPARATION IS IMPORTANT



WITNESS PREPARATION STRATEGIES



PSYCHOLOGY 101

FEAR AND ANXIETY ABOUT TESTIFYING HINDER WITNESS PERFORMANCE

- > Three Primary Fears
 - Fear of the unknown
 - Fear of failure
 - Fear of public speaking

PSYCHOLOGY 101

FEAR AND ANXIETY ABOUT TESTIFYING HINDER WITNESS PERFORMANCE

- > Evaluation apprehension
 - Exacerbates witness's dominant response
 - Most people experience deterioration
 - Distraction effect

- > Remedies:
 - Performance must be well-learned
 - Practice in advance in the actual environment

PSYCHOLOGICAL PROCESSES ACTING ON THE WITNESS

> Impression formation

- First impressions

> Impression management

- How we want others to view us; managing the image we are projecting

> Self-monitoring

- The ability to focus on our own actions
- Consider self-view in online platform

HOW TO MANAGE RISK AND FEAR

- > Witnesses must know their message
- > They must know it well enough to understand when they are off course
- > They must practice it so that it becomes the place to which they retreat when threatened or challenged

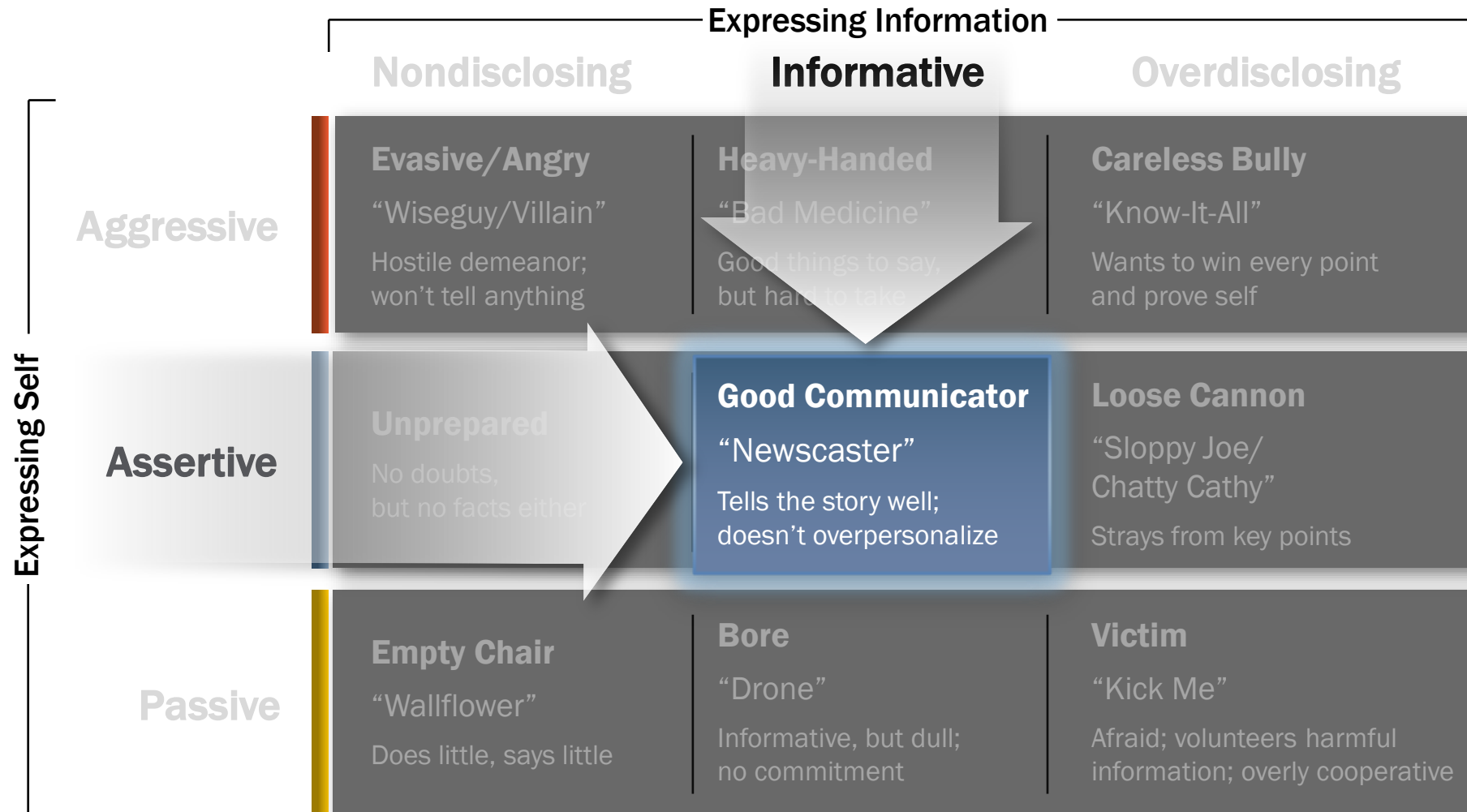
WITNESS PERFORMANCE

PSYCHOLOGY OF EFFECTIVE COMMUNICATION

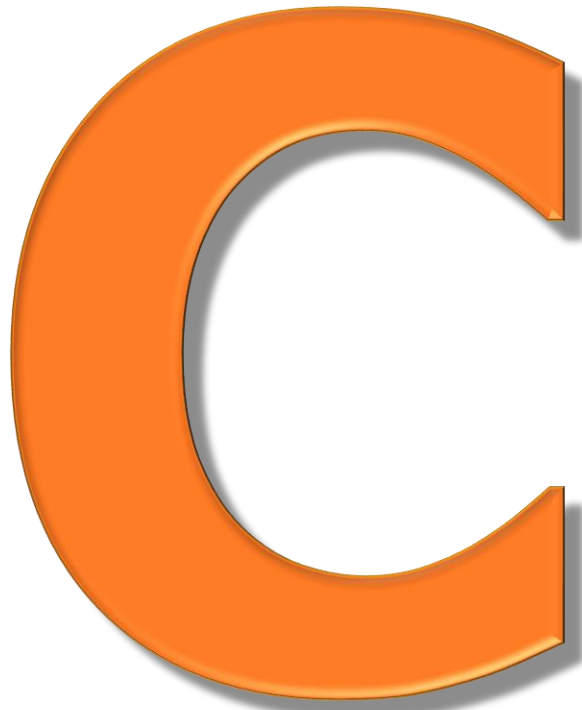
		Expressing Information		
		Nondisclosing	Informative	Overdisclosing
Expressing Self	Aggressive	Evasive/Angry “Wiseguy/Villain” Hostile demeanor; won’t tell anything	Heavy-Handed “Bad Medicine” Good things to say, but hard to take	Careless Bully “Know-It-All” Wants to win every point and prove self
	Assertive	Unprepared No doubts, but no facts either	Good Communicator “Newscaster” Tells the story well; doesn’t overpersonalize	Loose Cannon “Sloppy Joe/ Chatty Cathy” Strays from key points
	Passive	Empty Chair “Wallflower” Does little, says little	Bore “Drone” Informative, but dull; no commitment	Victim “Kick Me” Afraid; volunteers harmful information; overly cooperative

WITNESS PERFORMANCE

PSYCHOLOGY OF EFFECTIVE COMMUNICATION



THE THREE “C”S OF EFFECTIVE TESTIMONY



Conviction

Clarity

Connection

WITNESSES ARE KEY PLAYERS

IN ADVANCING & REINFORCING THE CASE STORY

Ensure that your witnesses are familiar with your storyline and the themes of the case and can incorporate them into their testimony

Counsel should work to alleviate anxiety about testifying remotely

Experiential witness preparation sessions as training to handle examination and channel negative emotions like anger or fear into effective testimony



QUESTIONS



SESSION THREE

Foreclosure Rules

The Hon. Joel Chupack

Circuit Judge of the Circuit Court of Cook County,
Mortgage and Foreclosure/Mechanics Lien Section

Robert Rappe

Vice President and Managing Foreclosure Attorney
Codilis & Associates, P.C.

ILLINOIS CREDITORS BAR ASSOCIATION
(Co-hosted with the North Suburban Bar Association)
SPRING SEMINAR 2021 - DISSECTING CREDITORS' BEST PRACTICES
FEBRUARY 15, 2021 (REMOTE PRESENTMENT)

JUDICIAL RESPONSE TO MORTGAGE FORECLOSURES IN THE AGE OF THE COVID-19 PANDEMIC

Presented by: Judge Joel Chupack, Circuit Court of Cook County, Chancery Division, Mortgage
Foreclosure/Mechanics Lien Section

CORONAVIRUS

Loan account status

Maturity Date:

Payoff Balance:

Good Through:

Include any fees, credits, or reversals that I

SUPREME COURT OF ILLINOIS'

Response to COVID-19 Emergency Highlights

M.R. 30370

3/17/20 – courts to hear emergency matters only

5/20/20 – each circuit may return to hear court matters

5/20/20 -- Guidelines for Resuming Operations (next slide)

5/22/20 – amendment of Supreme Court Rules (upcoming slide)

6/04/20 – amendment of Rule 206(h)(3) – remote electronic depositions

8/27/20 – changes to Rule 298 (no fee petitions); summons requiring appearance on a specified day may only be used in an action for eviction, replevin, or detinue; summons must say that e-filing is mandatory and include fee waiver information

8/28/20 – temporary extension of appellate deadlines are vacated as of 9/1

9/23/20 – summons for small claims to include remote appearance option

New Supreme Court Rules

- Rule 45. Participation in Civil or Criminal Proceedings by Telephone or Video Conferences

The court may, upon request or on its own order, allow a case participant to participate in a civil or criminal matter remotely, including by telephone or video conference. Use of telephone or video conferences in criminal or juvenile delinquency matters shall be undertaken consistent with constitutional guarantees applicable to such proceedings.

The court may further direct which party shall pay the cost, if any, associated with the telephone or video conference and shall take whatever action is necessary to ensure that the cost of remote participation is not a barrier to accessing the courts.

- Rule 46. Official Record of Court Proceedings – amended to include “video conferencing services”

- Rule 241. Use of Video Conference Technology in Civil Trials and Evidentiary Hearings

The court may, upon request or on its own order, for good cause shown in compelling circumstances and upon appropriate safeguards, allow a case participant to testify or otherwise participate in a civil trial or evidentiary hearing by video conferencing from a remote location. permit presentation of testimony in open court by contemporaneous transmission from a different location. Where the court or case participant does not have video conference services available, the court may consider the presentation of the testimony by telephone conference in compelling circumstances with good cause shown and upon appropriate safeguards. The court may further direct which party shall pay the cost, if any, associated with the remote conference and shall take whatever action is necessary to ensure that the cost of remote participation is not a barrier to access to the courts.

COOK COUNTY CIRCUIT COURT GAO 2020-07

(effective 11/23/2020)

e. CHANCERY DIVISION:

(i) The Presiding Judge shall establish procedures for hearing all matters, including, but not limited to, **scheduling by administrative order**, as long as such procedures are consistent with the remainder of this order;

(ii) **All mortgage foreclosure actions may proceed to judgment of foreclosure.** Consistent with Ill. Exec. Order 2020-72 (Nov. 13, 2020), residential and commercial foreclosure actions shall be immediately stayed upon entry of a judgment of foreclosure until further order of court; notwithstanding the foregoing provision, vacant or abandoned properties may proceed to sale based upon sufficient proof that as determined by the court;”

CHANCERY DIVISION GAO's

GAO No. 2020-14: covers General Chancery and Mechanics' Lien cases

GAO No. 2020-15: covers Mortgage Foreclosure cases

Both effective as of Dec. 16, 2020

CHANCERY DIVISION GAO 2020-14 & 15

General Matters

- All hearings by Zoom Videoconferencing until further order of court
- Notice of motions must contain the Zoom access info (which includes a call-in phone no.) and must contain instructions for SLR's (English and Spanish)
- Each Calendar has a dedicated email and Zoom access info, but some judges prefer not to use the published Zoom access info
- Other communications to opposing party where a court date has been set or continued must also include the Zoom access info

CHANCERY DIVISION GAO 2020-15

Allows mortgage foreclosures to proceed with limitations

- The following types of cases may proceed to a **JOE Only**:
 - residential foreclosures against Non “Covered Persons” (NEW)
 - commercial foreclosures (NEW)
- The following types of cases may proceed to a **JOE and Sale**:
 - vacant or abandoned properties upon sufficient proof
 - health and safety hazard/exigent circumstances

Residential Properties

- Mortgagor, resident or tenant lives at the property
(this is broader than the definition of “residential real estate” in §15-1219)
- Service of process can occur; SPS motions can proceed routinely
- No sales unless exigent circumstances exist
- If resident is a “Covered Person”, signs and returns Declaration to Plaintiff’s counsel, then proceedings are stayed
(definition of “Covered Person” is in Governor’s E.O. 2020-72)
- Declaration Form (IHDA) is included in Chancery GAO 2020-15
- Sample Notice to Resident is included in Chancery GAO 2020-15

Residential Properties

In a pending residential mortgage foreclosure case:

- Plaintiff sends Notice to Residents of COVID-19 Declaration Form (action cannot proceed until Notice is sent)

In a newly-filed residential mortgage foreclosure case:

- Plaintiff must send the Notice with Form Declaration within 14 days of service of summons or 30 days of filing of complaint, whichever is sooner

Residential Properties

What Happens After Notice and Declaration Form are Served?

- Plaintiff waits 30 days
- Within 14 days of expiration of 30-day period, Plaintiff files with the Clerk an Affidavit of Compliance and the Declaration if one was received.
- If Declaration was received, then Plaintiff emails it to the court
 - To the calendar's dedicated email address
 - Further proceedings are stayed and a status date is set
 - Counsel should email proposed stay and status order with Declaration
- If no Declaration was received, then Plaintiff can proceed to MSJ
 - Include Affidavit of Compliance in courtesy copy delivery

Commercial Foreclosures

- JOF's , but no OAS's, unless exigent circumstances exist
- More receiverships – calendars have special call
- Means more court approvals will be needed – leasing, repairs, etc.

Vacant or Abandoned Properties

- No longer need to file a motion to proceed
- Just present sufficient proof of vacancy or abandonment
- What is sufficient proof?
 - Up to each judge
 - My Standing Order provides that an affidavit must be filed with an inspection report dated within 60 days of presentation of motion
- Court can require additional proofs

Health and Safety Hazard; Exigent Circumstances

- Where any resident poses:
 - a direct threat to the health or safety of the other tenants or the public; or
 - an immediate and severe risk to the property
- Must file a motion to proceed with documented proof of the risk
 - Private information must be redacted **or** the motion should request that to file the documents under seal **or** request an *in camera* review.
- How might this arise in a condominium setting?
 - Refusal to wear a mask in the common areas?
 - Failure to quarantine?

Anticipated Questions

When will we return to the Daley Center?

Will the Court's Mediation Program return?

Will we still have virtual court appearances?

How heavy will the caseload get?



PLAINTIFF
LANDLORD

NOTICE

ALL PARTICIPANTS
PLEASE STAY
SEATED FOR THE
COURT TO BEGIN
THE HEARING

ATTENTION

DEFENDANT
TENANT

Do not
approach
the bench
while court is
in session

Do not
approach
the bench
while court is
in session

On-Line Resources

Legal Aid Chicago -- color-coded flowchart for mortgage foreclosures

<https://www.legalaidchicago.org/newsroom/in-the-news/covid-19>

Chicago Volunteer Legal Services – has links to government websites

<https://www.cvl.org/2020/08/06/covid-19-relief/>

Lawyers' Committee for Better Housing – good resource for tenants

<https://lcbh.org/issues/tenants-foreclosure>

National Fair Housing Alliance -- excellent resource

<https://nationalfairhousing.org/covid-19/>

IDFPR – <https://idfpr.com/COVID-19.asp>

FORECLOSURE CASES PENDING/FILINGS ANALYSIS 2006-2020 (AS OF DECEMBER 31, 2020)

Chancery Division, Circuit Court of Cook County

As of December 31, 2020, 4,050 new mortgage foreclosure cases were filed and 13,023 cases are pending. This filing total represents a 64% decrease in new filings from the new filings during the same period in 2019. The month of December showed an 80% decrease in filings from December 2019 and there was a 37% increase from September 2020. There have been 5,161 disposed cases in 2020 as of December 31, 2020. The filings in the fourth quarter of 2020 totaled 534, which represents a 32% increase from the 2020 third quarter filing numbers. The anticipated first quarter filings for 2021 may be within the range of 575 to 640 should the COVID-19 federal moratorium on foreclosure filings remain in place through the end of March 2021. As with previous attempts to estimate filings, many external factors may significantly impact the actual number of filings, particularly unknowns about COVID-related measures.

Table 1: Annual Figures (2003-2020*)

Year	Filings	Dispositions	Pending
2003	15,616	18,567	14,249
2004	16,637	18,647	12,489
2005	16,497	15,152	14,442
2006	20,761	18,635	18,401
2007	32,269	22,293	26,936
2008	43,773	26,251	42,920
2009	47,049	35,410	55,340
2010	50,621	36,550	70,550
2011	41,135	32,344	77,948
2012	41,993	41,942	78,128
2013	24,854	43,652	59,351
2014	17,205	35,790	40,814
2015	15,008	24,020	30,598
2016	13,133	19,989	23,792
2017	13,153	17,338	19,628
2018	11,697	14,862	16,139
2019	11,058	11,947	14,399
2020*	4,050	5,161	13,023

*Year-to-date

Table 2: Monthly Filings (2011-2020)

	2012	2013	2014	2015	2016	2017	2018	2019	2020
January	3,101	2,759	1,594	1,459	1,039	1,236	1,052	1,024	1,033
February	3,764	2,574	1,511	1,460	1,244	1,153	1,046	1,047	935
March	3,852	2,365	1,532	1,545	1,308	1,371	1,072	1,007	765
April	4,055	2,580	1,597	1,446	1,190	1,096	988	980	129
May	3,875	2,092	1,358	1,179	1,024	1,165	1,014	875	112
June	3,724	1,580	1,397	1,239	1,008	1,109	973	790	137
July	4,831	1,885	1,289	1,116	1,024	1,024	923	821	136
August	3,727	1,781	1,325	1,109	1,162	1,100	982	870	113
September	3,040	1,822	1,393	1,070	1,144	910	852	844	156
October	3,011	2,056	1,583	1,270	974	1,026	996	1,057	190
November	2,563	1,585	1,164	1,002	1,005	950	936	779	145
December	2,450	1,775	1,462	1,113	1,011	1,013	863	964	199
Yearly Totals	41,993	24,854	17,205	15,008	13,133	13,153	11,697	11,058	4,050

Figure 1: Annual Figures - Filings, Dispositions, and Pending Cases (2002-2020)

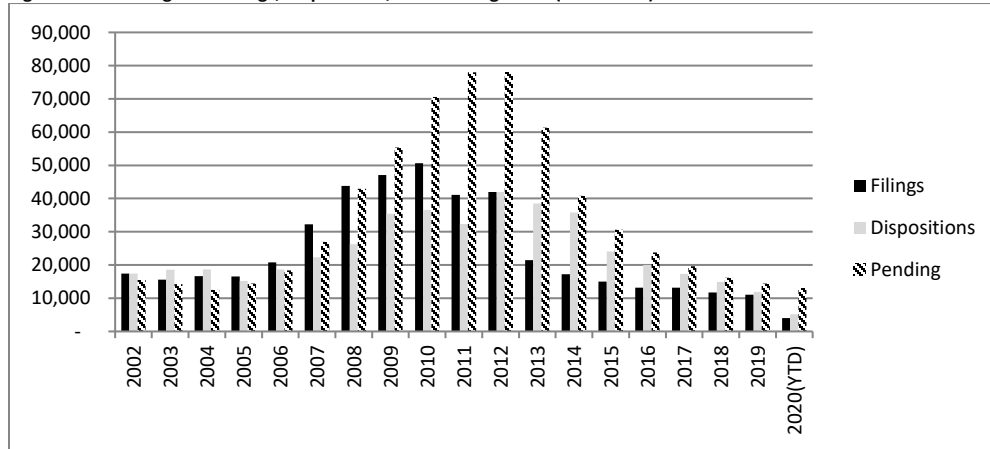


Figure 2: Foreclosure Filings by Month (2010-2020)

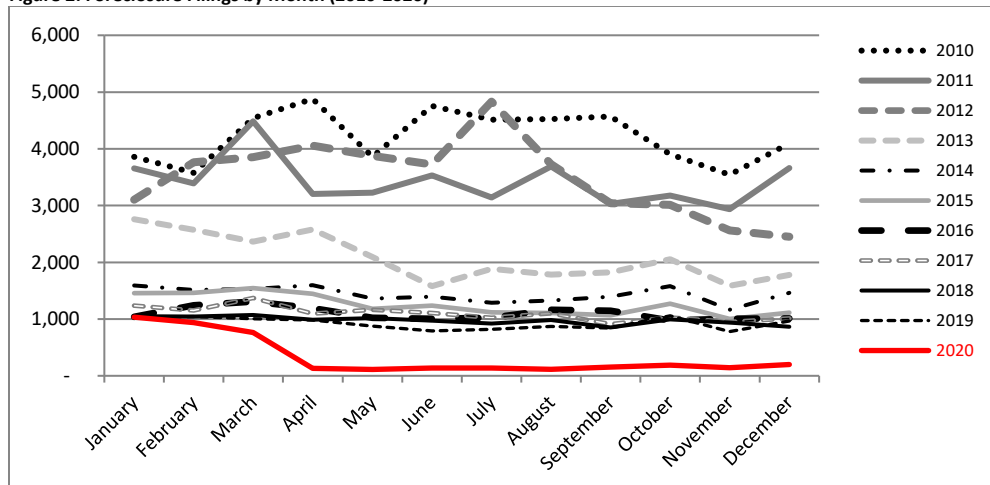


Table 3: Quarterly Figures (2012-2020)

Quarter-Year	Pending	Filings
2006-2011 figures available upon request		
Q1-2012	78,048	10,717
Q2-2012	79,998	11,654
Q3-2012	81,578	11,598
Q4-2012	78,128	8,024
Q1-2013	75,533	7,698
Q2-2013	69,424	6,252
Q3-2013	62,684	5,488
Q4-2013	59,351	5,416
Q1-2014	54,326	4,637
Q2-2014	49,231	4,352
Q3-2014	46,037	4,007
Q4-2014	40,814	4,209
Q1-2015	37,883	4,464
Q2-2015	36,537	3,864
Q3-2015	32,093	3,295
Q4-2015	30,598	3,385
Q1-2016	28,829	3,591
Q2-2016	26,960	3,222
Q3-2016	25,729	3,330
Q4-2016	23,792	2,990
Q1-2017	22,622	3,760
Q2-2017	22,183	3,370
Q3-2017	21,525	3,034
Q4-2017	19,628	2,989
Q1-2018	18,772	3,170
Q2-2018	17,907	2,975
Q3-2018	17,151	2,757
Q4-2018	16,139	2,795
Q1-2019	17,536	3,078
Q2-2019	16,637	2,645
Q3-2019	16,302	2,535
Q4-2019	14,399	2,800
Q1-2020	14,787	2,733
Q2-2020	14,789	378
Q3-2020	13,419	405
Q4-2020(e)	13,023	534
Q1-2021(e)	12,899	590

Foreclosures in the Age of COVID

Natonal-level Impacts



HOST

- Robb Rappe
Vice President and Managing
Foreclosure Attorney
Codilis & Associates, P.C.

AGENDA

- National-level Impacts:
 - CARES Act
 - GSE Extensions
 - CDC Eviction Moratorium

How did the CARES Act impact foreclosures?

For “residential” federal-backed loans (regardless of lien/delinquency status):

- ❑ Moratorium: **No FC's until 5/18** (vacant/abandoned excluded);
- ❑ Forbearance: At borrower's request during the “covered period,” must grant up to a **360 day forbearance**, no penalties/fees/interest, no docs.
--But what if the loan's already accelerated?

What GSE Extensions Exist?

GSE = Government Sponsored Entity
(Fannie, Freddie, HUD, USDA, VA)

--Vacant/Abandoned now excluded for all

- ▶ Fannie/Freddie: through 1/31/21
- ▶ HUD: through 2/28/21
- ▶ USDA: through 2/28/21
- ▶ VA: through 2/28/21

What did the CDC do?

- Center for Disease Control (CDC) issued a national eviction moratorium, which has now been extended through 1/31/2021 for all covered individuals.
- ▶ Individuals must fill out and send in a CDC created form declaring their hardship in order to be covered.



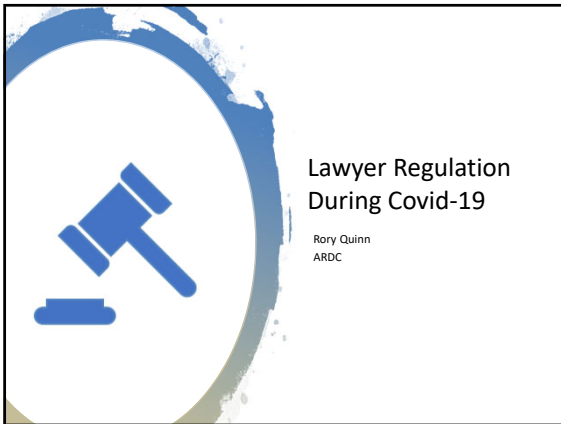
SESSION FOUR

Ethical Considerations During the Covid-19 Pandemic

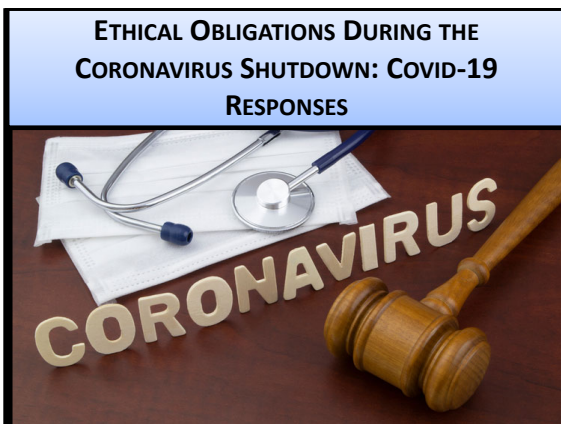
Rory P. Quinn

Litigation Counsel

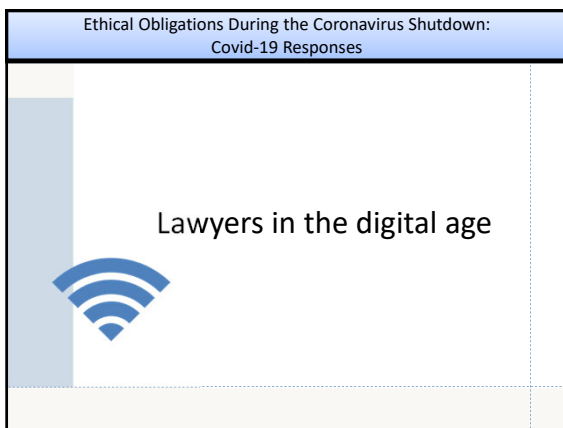
Illinois Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois (ARDC)





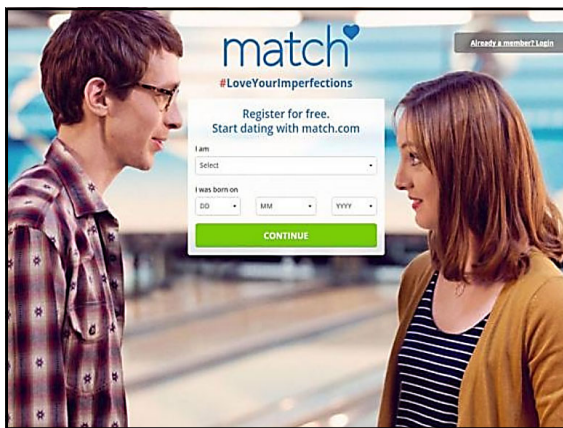












Rule 4.4(a)

In representing a client,

- **shall not** use means that have no substantial purpose other than to:
 - embarrass,
 - delay,
 - burden a third person,
- or use methods of obtaining evidence that violate the legal rights of such a person


**Ethical Obligations During the Coronavirus Shutdown:
Professionalism and Technology**

**Ethical Obligations During the Coronavirus Shutdown:
Covid-19 Responses**

**Ethical Obligations During the Coronavirus Shutdown:
Covid-19 Responses**

Ethical Obligations During the Coronavirus Shutdown:
Client Communications

Social Media



Ethical Obligations During the Coronavirus Shutdown:
Client Communications



SOCIAL NETWORKS Hostility is rising on social media and spilling over into REAL LIFE

- 3 in 4 have **WITNESSED AN ARGUMENT** ON SOCIAL MEDIA
- 4 in 5 report **RISING INCIVILITY** online
- 2 in 5 have **BLOCKED** or **UNSUBSCRIBED** or **UNFRIENDED** someone as a result
- 1 in 5 reduced in-person contact with someone over a cyber argument
- 88% believe that **PEOPLE ARE LESS POLITE** on social media than in person
- 81% say emotional most often conversations held on social media are **UNRESOLVED**

Ethical Obligations During the Coronavirus Shutdown:
Client Communications

Social Media Hypothetical #1

"I just do not understand my clients sometimes, My client J.Q. pleaded guilty to possession of a firearm today in front of Judge Tweeter. J.Q. He didn't have the gun but decided to take the fall for is scoundrel of a brother A.B. SMH"

Ethical Obligations During the Coronavirus Shutdown:
Client Communications

Social Media Hypothetical #2

"Spent all day in front of Judge Tweeter, Should be called Judge Clueless has no idea what they are talking about!!!"

Ethical Obligations During the Coronavirus Shutdown:
Client Communications

in re Kristine Ann Peshek,
M.R. 23794, 09 CH 89 (Ill.
Sept. 20, 2018)



Ethical Obligations During the Coronavirus Shutdown:
Client Communications

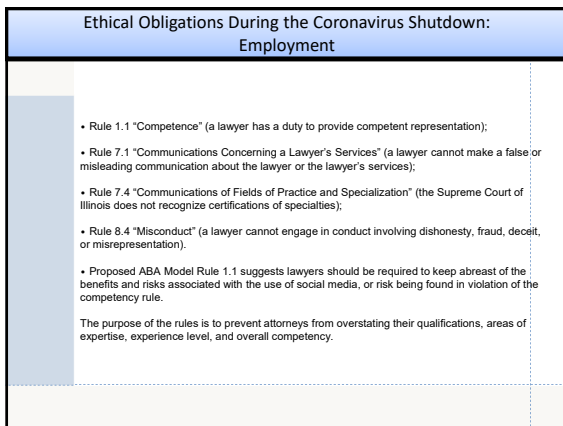
Rules at issue?

Rule 1.6(a)

Rule 8.4(d)









JURISDICTIONS DIFFER ON FRIENDING JUDGES:

- 1) **North Carolina** - *In re Terry*, No. 08-234, Judicial Standards Commission of North Carolina (April 1, 2009); judge friending a litigant mid-trial =Public Reprimand
- 2) **Florida** – NO; Fla. Jud. Ethics Advisory Comm., Formal Op. No. 2009-20
- 3) **Ohio** – YES; Okay for judges to “friend” lawyers who appear before them because social network “friend” may or may not be a friend in the traditional sense of the word”
- 4) **New York** – YES; Not “inherently inappropriate;” like adding person’s contact info to judge’s Rolodex or speaking to them in public setting

JURISDICTIONS DIFFER ON FRIENDING JUDGES:


- 5) **Wisconsin**- *In re Paternity of BJM*; 2020 WI 56
 - Circuit court judge accepted a friend request on FB
 - Mother in custody dispute. After hearing, before ruling
 - 25-day friendship mother liked 16 of judges posts, loved 2, commented on 2; and shared posts related to the issue at the hearing.
 - Appellate court reversed motion for reconsideration
 - Supreme Court Affirmed

Ethical Obligations During the Coronavirus Shutdown: Covid-19 Responses



Diligence in
Constantly
Changing Situation


Ethical Obligations During the Coronavirus Shutdown:
Covid-19 Responses



Succession Plan?

L


Ethical Obligations During the Coronavirus Shutdown:
Covid-19 Responses



Mail Delivery or
Other Deliveries

R


Ethical Obligations During the Coronavirus Shutdown:
Covid-19 Responses



Working Remotely

L

Ethical Obligations During the Coronavirus Shutdown:
Covid-19 Responses



Data Security


2012 TECHNOLOGY AMENDMENTS

NO CHANGE
Rule 1.6(a) requires that "A lawyer shall not reveal information relating to the representation of a client"

Minimal Change
Added a new duty in paragraph (c):
"A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client."

Amended Comment [18]:
Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure.

"Reasonable Efforts"
Required to Prevent Unauthorized or Inadvertent Disclosure or Access to Data





A MICROCOSM OF NATIONAL PROFESSIONAL RESPONSIBILITY TRENDS?

(2018 & 2019 ANNUAL REPORT www.ianic.org)

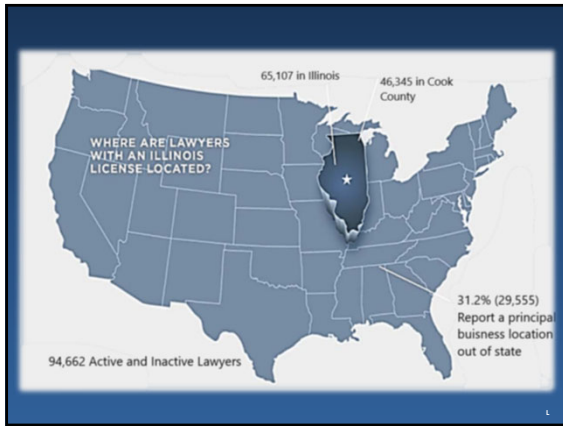


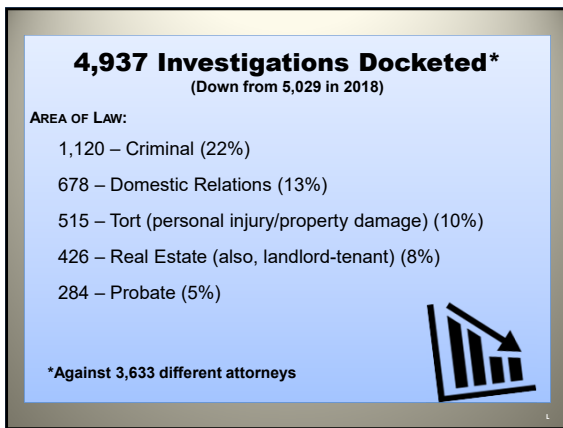
- Approximately 94,662 lawyers in 2019
 - Appx 4th largest attorney pop. in the US
 - 39% female; 61% male; <1% non-binary
 - the first net decrease in the Illinois lawyer population reported since the Commission was established in 1973.
- Approximately 94,608 lawyers in 2018
 - first-year enrollment at U.S. law schools falling to 1970s levels
 - 38% female; 62% male; <1% non-binary

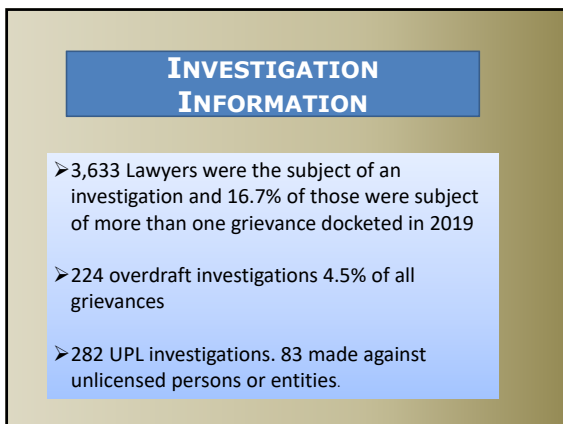
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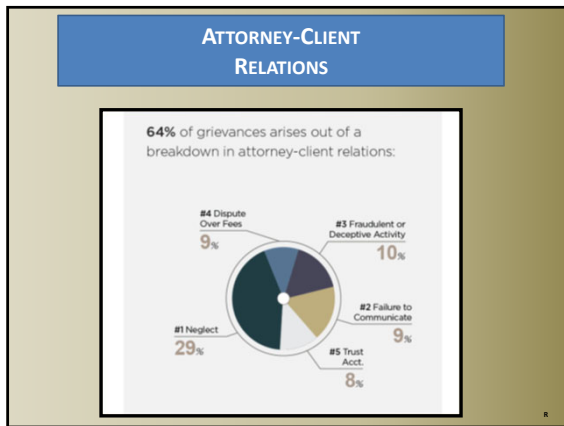
Registered Active and Inactive Attorneys by Judicial Districts: 2014-2019

	2014	2015	2016	2017	2018	2019	2014	2015	2016	2017	2018	2019
First District												
Cook County	45,375	45,487	45,315	45,393	45,834	46,340						
Second District												
15 th Circuit	200	197	194	183	185	180	247	238	235	223	225	225
16 th Circuit	1,215	1,159	1,127	1,144	1,140	1,139	875	844	835	828	825	825
17 th Circuit	795	785	794	784	787	785	1,385	1,380	1,385	1,385	1,356	1,340
18 th Circuit	4,342	4,332	4,308	4,289	4,307	4,312	180	181	179	176	177	176
19 th Circuit	1,125	1,117	1,100	1,021	1,006	1,023	662	657	656	623	600	604
20 th Circuit	583	580	570	573	569	568						
21 st Circuit	197	193	186	184	188	188						
Total	10,882	10,690	10,672	10,248	10,243	10,282	3,322	3,313	3,300	3,327	3,332	3,317
Third District												
22 nd Circuit	188	181	171	170	165	159	448	444	440	432	435	433
23 rd Circuit	817	811	814	809	817	818	252	254	255	258	261	264
24 th Circuit	845	840	830	817	804	811	737	732	739	745	751	759
25 th Circuit	219	213	208	208	204	208	251	250	248	248	245	248
26 th Circuit	581	580	584	570	560	560	142	141	142	141	140	142
27 th Circuit	124	120	121	124	118	123						
Total	2,997	2,829	2,906	2,927	2,910	2,966	1,884	1,880	1,880	1,921	1,949	1,987
Grand Total	64,439	64,740	64,390	64,170	64,079	64,337						







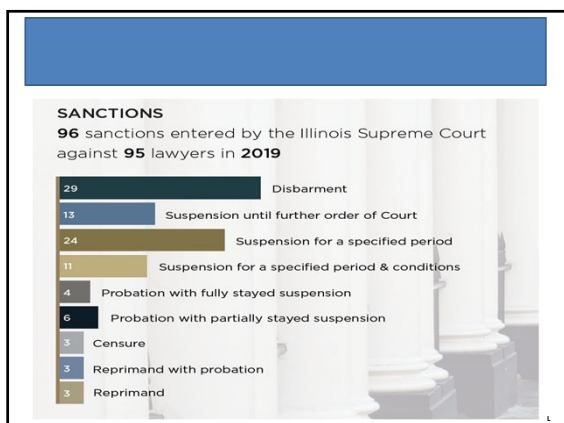




Subject Area Involved in the 44 Disciplinary Complaints Filed Before Hearing Board in 2019

Subject Area	Number of Cases*	% of Cases Filed*	Subject Area	Number of Cases*	% of Cases Filed*
Probate	13	30%	Criminal	2	5%
Real Estate	9	20%	Contract	2	5%
Tort	6	14%	Debt Collection	2	5%
Criminal Conduct/Conviction	6	14%	Bankruptcy	1	2%
Domestic Relations	5	11%	Patent and Trademark	1	2%
Workers' Comp/Labor Relations	4	9%			

*Totals exceed 59 disciplinary complaints and 100% because many complaints allege several counts of misconduct arising in different areas of practice.



PRACTICE SETTING OF LAWYERS DISCIPLINED IN 2019

Practice Setting	Solo Firm	Firm 2-10	Firm 11-25	Firm 26+	Gov't/ Judicial	In-House Corporate	Academia	Not Engaged in Practice
96 Lawyers Sanctioned	60	20	1	6	2	3	0	4

2018 Comparison...

Practice Setting	Solo Firm	Firm 2-10	Firm 11-25	Firm 26+	Gov't/ Judicial	In-House Corporate	Academia	Not Engaged in Practice
78 Lawyers Sanctioned	47	19	0	1	1	0	0	10


DISCIPLINARY PROSECUTIONS

Less than **2%** of grievances result in formal hearing matters*

Fun Facts

*4,937 investigations total in 2018

- 68 disciplinary proceedings were added to the Hearing Board's docket in 2018 (S.Ct. R. 753, 761(d) or 767) = 1.3%
- Of those, 44 were initiated by the filing of a new disciplinary complaint (753 or 761(d)) = >1%
- In addition to the 68 disciplinary proceedings filed before the Hearing Board in 2018, the ARDC initiated the filing of proceedings directly before the Illinois Supreme Court and before the Circuit Court in 41 proceedings (762(a), 763, 757 & 779(b)) = 68+41 = 109 = 2.2%



**In re Christopher
Craig Anderson**

2019PR00003



Regulatory work
beyond discipline

**Diversion
and
Supervision**



ARDC Diversion Program

- New ARDC Rule 56 permits the ARDC to close an investigation if a lawyer agrees to complete one or more activities, services or programs that addresses issues that may be resulting in grievances against the lawyer;
- Diversion is not allowed for conversion, acts involving dishonesty, or where the client has suffered actual prejudice, unless restitution.

Rule 108 Inquiry Board Deferrals

- Rule 108 allows deferral by Inquiry Board pending an attorney's compliance with conditions imposed by the Board;
- Deferral not allowed for conversion, acts involving dishonesty, conduct has resulted in, or is likely to result in, actual prejudice absent restitution, or if the attorney is a recidivist.

PMBR

INSURED



Amended Rule 756(c)(2)
Eff. January 25, 2017

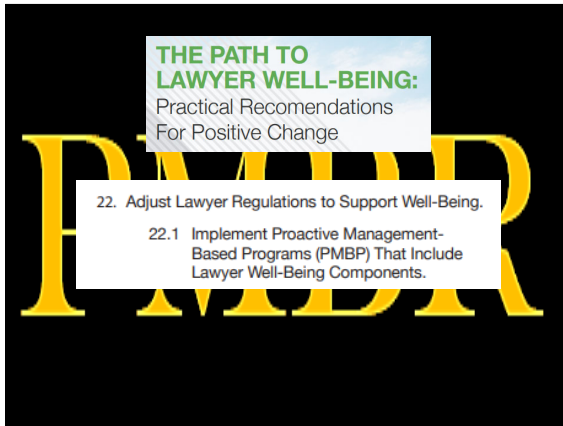
Practice Size*	Number Responding in Practice Category	Practice Size % of Total Engaged in Active Practice
Solo	13,555	19.8%
Firm of 2-10 Attys	12,890	18.9%
Firm of	11,352	16.4%

Solo	13,555	19.8%
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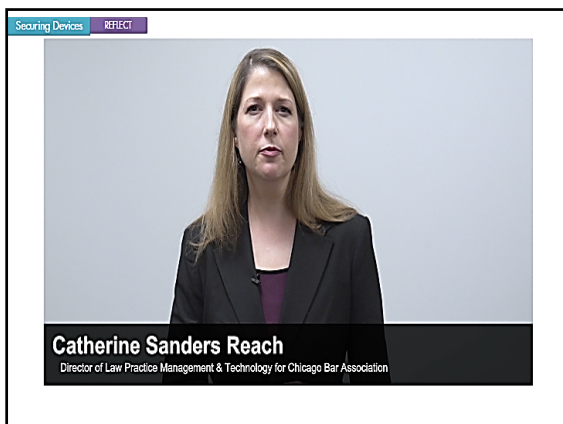
* Preliminary figures taken from the 68,317 responses to the law practice size question for the 2016 registration year from lawyers with an Active status license and who indicated that they are currently practicing law.

Private Practice, Solo Size: Malpractice	
# of Attorneys	
5,588	No
13,555	Total

Private Practice, Solo Size: Succession Plan	
# of Attorneys	
10,463	No
2,167	Yes
13,555	Total







Quiz

Time for a quiz!

This 10 question quiz will test your understanding of the basic and practical steps necessary to protect the client information you store or access electronically and help you determine your next steps in protecting this information.

Need Improvement

Your Score: **50%**

Resources

- Articles/Ethics Tips/Misc.
- Policies and Forms
- ISBA Ethics Opinions
- Rules and Cases

[Conflicts of Interest: Examining a current client as an adverse witness](#), Peter Geraghty, A.B.A. Ctr. for Prof'l Resp. (Sept. 2017).

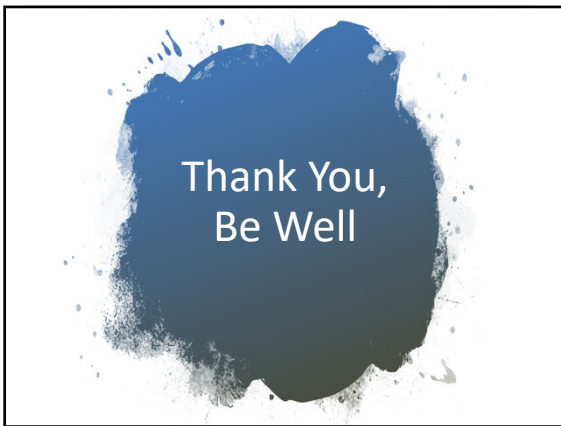
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✓ [Ethics Tip: Multiple Representation: Proceed with Caution](#), Peter Geraghty and Susan Michmerhuizen, A.B.A. Ctr. for Prof'l Resp. (Nov. 2014).

[Conflict-Checking Systems: Three Great \(and Cheap\) Ways to Effectively Manage Conflict Checking](#), Todd C. Scott, A.B.A. GPSolo, Vol. 2, No. 2 (Feb. 2006).

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SESSION FIVE

Landlord-Tenant Rights/Eviction Procedures

The Hon. Michael B. Betar

Associate Judge, Nineteenth Judicial Circuit

The Hon. James A. Wright

Associate Judge, Municipal Department, District 1 -
Forcible Entry and Detainer Section

Robert Kahn

Partner, Sanford Kahn, LLP

2021 EVICTIONS OUTLINE

I. OVERVIEW

- a. New Governor's Order and how Courts are interpreting**
- b. Declarations**
 - i. How to serve**
 - ii. Challenging declarations**
- c. Cook County**
 - i. Chief Judge Orders**
 - ii. ERP**
 - iii. New court procedures**

II. Force majeure

- a. In Re: Hitz 2020 WL 2924523 (Bank N.D. 6/3/20)**
- b. commercial frustration**

III. Sheriff procedures

- a. serving papers**
- b. enforcing evictions**
- c. Chief Judge Order extending OPs**

IV. Emergency evictions

- a. tenant poses a threat to health and safety to other persons;**
- b. tenant causing serious property damage**

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TENANTS – KNOW YOUR RIGHTS

COVID-19 EVICTION PROTECTION ORDINANCE

Landlords who issue five-day notices of eviction for non-payment must include this notice informing tenants of their rights under the COVID-19 Eviction Protection Ordinance, available at www.chicago.gov/eviction.

Chicago residential tenants who have lost income as a direct or indirect result of the COVID-19 pandemic should notify their landlords in writing within five days of receiving an eviction notice in order to further protect themselves from eviction.

This written notification can take place through letter, email or text message. A text message to the landlord as simple as *"I have been unable to pay rent because I have been financially affected by the COVID-19 pandemic"* will suffice. A more formal template is available at www.chicago.gov/eviction.

Once tenants provide this notice, they will have additional protections beyond the typical five-day notice and eviction process. Further details are listed below.

Local, State and Federal Requirements

In response to the pandemic, the governor issued a disaster proclamation and eviction moratorium in March 2020. During that eviction moratorium, special rules apply to evictions based upon nonpayment of rent. The moratorium is currently scheduled to end on Nov. 14, 2020, but it could be extended again by the governor. An additional federal moratorium on evictions from the Centers for Disease Control is also in effect through Dec. 31, 2020.

When the moratorium period ends, Illinois landlords can again file for eviction due to non-payment of rent. Typically, a tenant has five days to respond to a notice of a landlord's intent to file for eviction. In June 2020, the Chicago City Council approved the *COVID-19 Eviction Protection Ordinance*, which extends that period another seven days for a total of 12 days, if the tenant writes the landlord stating that they have had a "COVID-19 Impact."

A COVID-19 Impact can be claimed when a tenant or another household member:

- Is laid-off from work
- Has their hours at work reduced
- Has to isolate or quarantine because of COVID-19 diagnosis or possible exposure
- Has to care for someone else affected by COVID-19

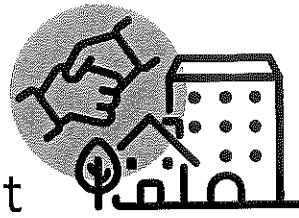
By City ordinance, during the 12-day period, the landlord has to contact the tenant and try to work out with the tenant a plan to avoid eviction. A plan to avoid eviction could include a repayment plan, mediation or arbitration, letting the tenant use their security deposit to cover the missed rent, an agreement for the tenant to move out without the landlord getting an eviction judgment against them, or other arrangements agreed to by the landlord and tenant.

The ordinance also requires that a repayment plan must give a tenant at least two months to re-pay each month of missed rent, but the landlord and tenant can agree to more time if they choose. The ordinance also determines what kind of interest and fees a landlord can charge on missed rent, how a tenant can show the landlord proof of a COVID-19 Impact, and what happens if the landlord and tenant decide to use the security deposit.

The ordinance does not require that the landlord and tenant reach an agreement, but that they make a good faith effort to do so. If a landlord does not use good faith to try and work out an arrangement with the tenant, but files an eviction case anyway, the court must dismiss the eviction case.

For more information on conflict resolution, contact the Center for Conflict Resolution at cm@ccrchicago.org or 312-922-6464, ext. 22. Additional information and resources are available at www.chicago.gov/eviction.

Cook County **LEGAL AID** for Housing and Debt



*Helping you resolve eviction, foreclosure,
debt, and tax deed issues.*

FREE LEGAL HELP FOR RESIDENTS OF COOK COUNTY

Are you dealing with an eviction or unresolved debt issue?

Do you live in Cook County?

You are not in this alone. You may be eligible for FREE legal help.

Learn more by calling 855-956-5763 or visiting www.cookcountylegalaid.org

Evictions and unresolved debt issues can have a long-lasting, negative impact on your future. Call the **Early Resolution Program (ERP)** to speak with a lawyer and get connected to other resources. This program is available to all residents of Cook County free of charge. You do not need to have a case in court to get help.

You can use the program if:

- ▶ You are a renter and your landlord is trying to evict you;
- ▶ You are a landlord who is not represented by a lawyer;
- ▶ You were sued by someone who wants to collect an unpaid debt (for example a credit card company trying to collect unpaid charges); OR
- ▶ You need to sue someone who owes you money and do not have a lawyer.

The Early Resolution Program (ERP) includes free legal aid, mediation services, and connections to other resources including rental assistance. Mediation is a chance for a landlord and tenant, or debtor and creditor, to resolve issues with the help of a knowledgeable and neutral person.

The Early Resolution Program is being provided through Cook County Legal Aid for Housing and Debt (CCLAHD), a county-wide initiative to help resolve eviction, foreclosure, debt, and tax deed issues. Visit www.cookcountylegalaid.org for information about other programs and services.

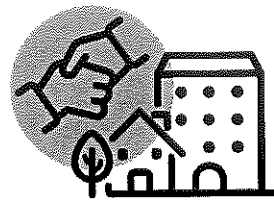


CARPLS Legal Aid
Center for Conflict Resolution
Center for Disability & Elder Law

Greater Chicago Legal Clinic
Lawyers' Committee for Better Housing
Legal Aid Chicago

AYUDA LEGAL

para viviendas y deudas
del Condado de Cook



Ayuda para resolver problemas de desalojo, ejecución de hipotecas, deudas y escrituras de impuesto.

AYUDA LEGAL GRATUITA PARA RESIDENTES DE CONDADO DE COOK

¿Está enfrentando un problema de desalojo o deuda no resuelta?

¿Vive en el condado de Cook?

No está solo en esto. Puede ser elegible para recibir ayuda legal GRATIS.

Para obtener más información, llame al 855-956-5763 o visite www.cookcountylegalaid.org

Los problemas de desalojo y deudas no resueltas pueden tener un impacto negativo y duradero en su futuro. Llame al **Programa de Resolución Temprana** (ERP, Early Resolution Program) para hablar con un abogado y conectarse con otros recursos. Este programa está disponible para todos los residentes de condado de Cook sin costo. No es necesario que tenga un caso en tribunales para obtener ayuda.

Puede usar el programa si:

- ▶ es inquilino y el dueño intenta desalojarlo;
- ▶ es dueño y no tiene un abogado representante;
- ▶ recibió una demanda de alguien que desea cobrar una deuda no pagada (por ejemplo, una empresa de tarjetas de crédito intenta cobrar cargos no pagados); O BIEN
- ▶ necesita demandar a alguien que le debe dinero y no tiene un abogado.

El Programa de Resolución Temprana (ERP) incluye ayuda legal gratuita, servicios de mediación y conexiones con otros recursos, como ayuda de arrendamiento. La mediación es una oportunidad para que un dueño y un inquilino, o un deudor y un acreedor, resuelvan los problemas con la ayuda de una persona neutral y con conocimientos.

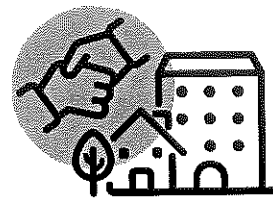
El Programa de Resolución Temprana se proporciona a través de Ayuda Legal para Vivienda y Deudas del Condado de Cook (CCLAHD, Cook County Legal Aid for Housing and Debt), una iniciativa en todo el condado para ayudar a resolver problemas de desalojo, ejecución de hipotecas, deudas y certificados de dominio de venta fiscal. Visite www.cookcountylegalaid.org para obtener información acerca de otros programas y servicios.



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Hrabstwo Cook POMOC PRAWNA na mieszkania i długi



Pomoc na rzecz rozwiązywania problemów związanych z eksmisją,
zajmowaniem obciążonej hipoteki, długami oraz sprawami podatkowymi.

BEZPŁATNA POMOC PRAWNA DLA MIESZKAŃCÓW HRABSTWA COOK

Czy borykasz się z widmem eksmisji lub nierozwiązaną kwestią zadłużenia?

Czy mieszkasz w hrabstwie Cook?

Nie jesteś w tym sam(a). Może Ci przysługiwać BEZPŁATNA pomoc prawna.

Uzyskaj więcej informacji, dzwoniąc pod numer 855-956-5763
lub odwiedzając stronę internetową www.cookcountylegalaid.org

Sprawy takie jak eksmisja czy nierozwiązane kwestie zadłużenia mogą mieć długotrwały i negatywny wpływ na Twoją przyszłość. Skontaktuj się z personelem Early Resolution Program (ERP), aby porozmawiać z prawnikiem lub uzyskać dostęp do innych zasobów. Program ten jest nieodpłatnie dostępny dla wszystkich mieszkańców hrabstwa Cook. Nie musisz mieć sprawy w sądzie, aby uzyskać pomoc.

Możesz skorzystać z programu, jeśli:

- ▶ Wynajmujesz mieszkanie lub dom, a jego właściciel zamierza Cię eksmitować;
- ▶ Wynajmujesz komuś mieszkanie lub dom, a nie masz prawnika;
- ▶ Zostałeś/-aś pozwany/-a do sądu przez kogoś, kto chce od Ciebie ściągnąć niezapłacony dług (na przykład firma obsługująca karty kredytowe, której zalegasz z tytułu nieuiszczonych opłat);
LUB
- ▶ Zamierzasz pozwać kogoś, kto jest Ci dłużny pieniądze, a nie masz prawnika.

W ramach Early Resolution Program (ERP) możesz uzyskać dostęp do bezpłatnej pomocy prawnej, usług mediatora, a także innych form wsparcia, takich jak pomoc z czynszem. Mediacje to dla właściciela i najemcy bądź dłużnika i wierzyciela szansa na rozwiązanie problemów dzięki pomocy kompetentnego i bezstronnego specjalisty.

Projekt Early Resolution Program jest prowadzony w ramach Cook County Legal Aid for Housing and Debt (CCLAHD) — inicjatywy wdrożonej na terenie całego hrabstwa na rzecz rozwiązywania problemów związanych z eksmisją, zajmowaniem obciążonej hipoteki, długami oraz sprawami podatkowymi. Odwiedź stronę www.cookcountylegalaid.org, aby uzyskać informacje o innych programach i usługach.



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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

GENERAL ADMINISTRATIVE ORDER 2020-09 (AMENDED)

**SUBJECT: RESIDENTIAL EVICTION AND CONSUMER DEBT
EARLY RESOLUTION PROGRAM**

The ongoing COVID-19 pandemic has created an economic situation in Cook County that is ripe for a large number of evictions and consumer debt collection actions once the stay is lifted under the orders of the Governor of the State of Illinois and under this Court's previous General Administrative Orders. Given the probability of a high volume of evictions and consumer debt actions, this Court collaborated with a number of bar associations, legal aid representatives, government representatives, and community partners to develop an Early Resolution Program for the Municipal Department ("ERP"). The ERP is for eviction and consumer debt actions and will provide legal aid services, mediation services, and community support resources to litigants involved in these actions. Implementing the ERP with these resources encourages early agreements and resolutions in cases where an agreement is attainable. Whenever possible and practical, services will be provided remotely to maintain safe social distancing practices.

IT IS HEREBY ORDERED THAT:

I. RESOURCES AVAILABLE

ERP resources are available for all evictions and consumer debt actions filed after March 27, 2020 for residents who have rental, tenant, or consumer debt issues prior to a case being filed. Services available under the ERP will include brief legal services (legal screenings, legal information and advice, settlement negotiation, referrals for extended representation, drafting assistance), conflict resolution (mediation and negotiation assistance), and/or financial assistance (applying for emergency rental funds, mortgage relief, financial counseling, or other financial assistance). The services that are directly needed by a case will depend on the facts and circumstances in each specific case. Services are available for landlords, tenants, and debtors by calling 1-855-956-5763 or visiting cookcountylegalaid.org.

II. ERP PROCEDURES

A. Applicability.

The following procedures for the ERP apply to newly filed eviction cases and newly filed consumer debt cases starting January 25, 2021, including cases with a jury demand. Only cases involving residential tenants and consumer debts will be eligible for referral to the ERP. This order does not apply to pending eviction and consumer debt cases, except as identified herein. These procedures are subject to any federal or state moratoriums that may be implemented as part of ongoing COVID-19 protocols.

B. Eviction Cases

1. Notice of the ERP.

- a) Notice of the ERP with Summons. When eviction cases are allowed to commence as directed by the Chief Judge of the Circuit Court of Cook County, any plaintiff initiating a new eviction action in any of the districts of the Municipal Department of the Circuit Court of Cook County shall include a notice of the ERP with the summons in English, Spanish, & Polish. The notice shall be attached to a copy of the summons filed with the Clerk of the Circuit Court. The notice of the ERP is included with this General Administrative Order (**Attachment 1**).
 - i) *Form of Summons.* Plaintiffs shall use either the attached template form summons (**Attachment 2**) or the Illinois Standardized Form Summons. Either summons shall include a copy of the notice of ERP pursuant to Section II(B)(1)(a).
 - ii) *Alias Summons.* In any case where an alias summons needs to be issued to effectuate service, including pending cases, plaintiff shall include the same notice of ERP with the Alias Summons. Plaintiff may also post notice of the ERP at the property address in addition to the Alias Summons notice.
 - iii) *Template Summons.* Template summons may be created or amended as may be necessary and posted on the Clerk of the Circuit Court's website.
- b) Notice in Cases Filed from March 27, 2020 to January 25, 2021.
 - i) *Notice to Be Delivered to All Defendants.* For cases filed from March 27, 2020 through January 25, 2021, all plaintiffs shall deliver to each defendant in a case a "Notice of Early Resolution Program" and attach the ERP flyer in English, Spanish, and Polish (*see Attachment 1*).
 - ii) *Timing of Notice.* The notice of the ERP shall be provided to all defendants at least five (5) business days prior to the next court proceeding by First Class Mail.
 - iii) *Exceptions.* In cases where the defendant is already represented by counsel, plaintiff does not need to send the notice of ERP.
- c) Filing and Certificate of Service. The plaintiff shall also file the "Notice of Early Resolution Program" with the Clerk of the Circuit Court, including a

certificate of service pursuant to 735 ILCS 5/1-109, any case filed since March 27, 2020.

2. *Automatic Case Management Date.* For all eviction cases filed after January 25, 2021, the Clerk of the Circuit Court shall assign an automatic 30-day initial case management date at the time of filing of the complaint. Only residential eviction cases will be eligible for referral to the ERP.

C. Consumer Debt Cases.

1. Notice of the ERP.

- a) Notice of the ERP with Summons. When consumer debt cases are allowed to commence as directed by the Chief Judge of the Circuit Court of Cook County, any plaintiff initiating a new consumer debt action in any of the districts of the Municipal Department of the Circuit Court of Cook County shall include a notice of the ERP with the summons in English, Spanish, & Polish. The notice shall be attached to a copy of the summons filed with the Clerk of the Circuit Court. The notice of the ERP is included with this General Administrative Order (**Attachment 1**).
 - i) *Form of Summons.* Plaintiffs shall use the appropriate summons for consumer debt cases that complies with any and all regulations associated with debt collection and include a copy of the notice of ERP pursuant to Section II(C)(1(a)).
 - ii) *Alias Summons.* In any case where an alias summons needs to be issued to effectuate service, including pending cases, plaintiff shall include the same notice of ERP with the Alias Summons.
 - iii) *Template Summons.* Template summons may be created or amended as may be necessary and posted on the Clerk of the Circuit Court's website
- b) Notice in Cases Filed from March 27, 2020 to January 25, 2021.
 - i) *Notice to Be Delivered to All Defendants.* For cases filed from March 27, 2020 through January 25, 2021, all plaintiffs shall deliver to each defendant in a case a "Notice of Early Resolution Program" and attach the ERP flyer in English, Spanish, and Polish (*see Attachment 1*).
 - ii) *Timing of Notice.* The notice of the ERP shall be provided to all defendants at least five (5) business days prior to the next court proceeding by First Class Mail.

iii) Exceptions. In cases where the defendant is already represented by counsel, plaintiff does not need to send the notice of ERP.

c) Filing and Certificate of Service. The plaintiff shall also file the “Notice of Early Resolution Program” with the Clerk of the Circuit Court, including a certificate of service pursuant to 735 ILCS 5/1-109, any case filed since March 27, 2020.

2. *Automatic Case Management Date*. For consumer debt cases filed after January 25, 2021, the Clerk of the Circuit Court shall assign an automatic 90-day initial case management date at the time of filing of the complaint.

D. Case Management Scheduling; Continued Cases. All new cases will be assigned to either an eviction call or a consumer debt call for its automatic initial case management conference, as specified in Sections II(B) and II(C).

1. *Call Structure*. In each district, there shall be one call dedicated to Eviction Cases and one call dedicated to Consumer Debt Cases. Each call will handle the automatic initial case management hearings.

a) District 1: The First Municipal District will hear the Eviction Call and the Consumer Debt Call on a daily basis as scheduled by the Presiding Judge of the First Municipal District.

b) Districts 2, 3, and 5: Districts 2, 3, and 5 will hear the Eviction Call and Consumer Debt call on a weekly basis.

c) Districts 4 and 6: Districts 4 and 6 will hear the Eviction Call and the Consumer Debt call twice a week.

2. *Call Capacity*. For each eviction call and each consumer debt call, the court will hear a maximum of sixty (60) cases per call.

3. *Case Management Schedule*. The following is the initial case management call schedule for each district. It is subject to adjustments as may be necessary to accommodate any fluctuations in case volume.

(Schedule begins on next page)

	District 1	District 2	District 3	District 4	District 5	District 6
Monday 9a-12p: Eviction Call	✓			✓		
Monday 9a- 12p: Consumer Debt Call	✓			✓	✓	
Monday 1p-4p: Eviction Call					✓	
Monday 1p-4p: Consumer Debt Call					✓	
Tuesday 9a – 12p: Eviction Call	✓					
Tuesday 9a-12p: Consumer Debt call	✓					✓
Tuesday 1p-4p: Eviction Call						✓
Wednesday 9a-12p: Eviction Call	✓			✓		
Wednesday 9a- 12p: Consumer Debt Call	✓			✓		
Thursday 9a-12p: Eviction Call	✓		✓			
Thursday 9a-12p: Consumer Debt Call	✓					✓
Thursday 1p-4p: Eviction Call						✓
Thursday 1p-4p: Consumer Debt Call			✓			
Friday 9a-12p: Eviction Call	✓	✓				
Friday9a- 12p: Consumer Debt Call	✓	✓				

4. *Initial Case Management Conference.* Each case management call will take place before a judge assigned to that call. Litigants should be able to appear in ERP proceedings remotely unless the Court deems it necessary for the litigant to appear in person or the litigant chooses to do so. For litigants who request to appear in person, the court will make provisions to access the ERP remotely from within the courthouse, including providing access points through Zoom kiosks located in each courthouse, or will follow strict COVID-19 protocol within the courtroom. Each call will have an assigned ERP case manager to assist the judge in triaging and fielding information about the cases during the call. The judge will determine if the parties have been properly served and if the case is at an appropriate stage to be referred for case assessment. If the case can be appropriately referred for case assessment, the ERP case manager will prepare an order for the judge to enter and provide the parties with the necessary information. The matter will be continued and set for a status date fourteen (14) days after the initial case management conference, or on a date that allows for proper service on the defendant and time to file an appearance in accordance with statutory requirements.
5. *Continued Cases.* Cases that are continued from the initial case management call for a status date before the judge will be set on a status call no earlier than fourteen (14) days. Each district will determine if caseload permits scheduling continuances at the same time as the initial case management call or if an additional status call for continuances needs to be established to accommodate the volume.

E. Referral to Case Assessment under the ERP. Once a case is referred for case assessment the following procedures will take place:

1. *Case Manager Meeting Scheduled.* Within two (2) business days, the case manager will assign all parties a date and time to meet with the case manager remotely by video or teleconference. For litigants who request to appear in person, the court will make provisions to access the ERP program partners remotely, including providing access points through Zoom kiosks located in each courthouse.
2. *ERP Case Manager Meeting.* The purpose of the case assessment conference is to allow the parties to have a conversation with each other and to have the Resource case manager assess what resources the parties may need to be referred to or have already accessed.
 - a) Self-represented litigants who have not already connected to legal aid and mediation resources will be referred to the appropriate program partners for further screening and assistance. Referrals will be made with consideration for factors such as whether the parties are represented, the underlying basis of the complaint, and other criteria to be determined by the program partners.
 - b) If both parties are present and represented by counsel, they can attempt to negotiate a resolution on their own, choose to use the mediation services provided by the Center for Conflict Resolution, or request for the case to proceed to litigation if they already have unsuccessfully made good faith efforts at early resolution.
 - c) If the parties have already worked out a settlement agreement, the Resource case manager will offer any unrepresented parties the opportunity to go into a breakout room to consult with an attorney about the terms of the settlement agreement before an order is entered.
 - d) Program staff from each program partner will be available to meet with parties both during and after the case assessment. Resource case managers will either (1) utilize the Zoom breakout room feature to allow program partners to meet with parties during the scheduled court date; or (2) provide instructions on how to schedule an appointment before the next court date. Case managers can also schedule a mediation or negotiation session between the parties in the next 14 days.
 - e) The Resource Case Manager will provide a summary of the meeting to all the parties, including resource referrals.
3. *Status Date Following Initial Referral to the ERP.* The Resource Case Manager will provide the summary of the meeting that was provided to the parties to the court prior to the next status date. The parties will also appear at the status date to update the judge. All ERP resources are directed at and encourage a good faith effort for the parties to resolve the matter.
4. *Default Orders.* Default orders in eviction or consumer debt actions should only be entered after a Court case manager has had an opportunity to contact the defendant and notify the defendant about resources, and in no event until at least 14 days have passed from the initial case management date.

5. *Resolution of the Case.*

- a) Agreement by the Parties. If the parties are able to reach an agreement prior to the next scheduled court date through direct negotiations of counsel, or with the assistance of a mediator, they can submit the agreement via email to the ERP Court case manager at a designated email address. Agreements negotiated with the assistance of program partners may be submitted with electronic signatures. The ERP Court case manager will work with the Court to ensure an order is entered that disposes of the case in accordance with the agreement or, where appropriate, sets a continuance date to ensure compliance with the agreement.
- b) No Resolution. If the parties are unable to reach an agreement, or if the terms of the agreement have not been met, the judge will determine how to proceed.

F. Proceeding on Cases Before Case Management: Emergency Matters & Agreement.

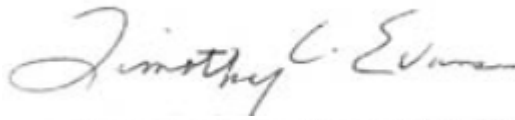
1. *Conditions to Proceed before Case Management Date.* An eviction or a consumer debt case may proceed before the automatic case management date under the following conditions:
 - a) One of the following is present:
 - i) A documented emergency that needs immediate attention exists; or
 - ii) Both parties want to proceed immediately by agreement, where a self-represented litigant has had an opportunity to access ERP resources or both parties are represented by counsel; and
 - b) The parties contact the court for earlier scheduling under the appropriate motion to proceed before the case management date; and
 - c) The court approves scheduling of the matter before the case management date.
2. *Definition of Emergency.* Emergency matters are defined as sudden and unforeseen circumstances that may cause injury, loss of life, or damage to property and that requires an urgent response and remedial action. It also includes matters where a tenant, lessee, sub-lessee, or resident of the property poses a direct threat to the health and safety of the other tenants, the public, or an immediate and severe risk to the property.

III. Clerk of the Circuit Court Responsibilities. The Clerk of the Circuit Court is directed to implement the following for the ERP by January 25, 2021:

1. Program and create an eviction call and a consumer debt call as established in Section II(D) for each Municipal District, including any necessary e-filing programming changes;
2. Program and create an automatic case management hearing date for cases filed after January 25, 2021 as established by Section II(B) and II(C);
3. Assign court clerks to the new calls established in Section II(D);

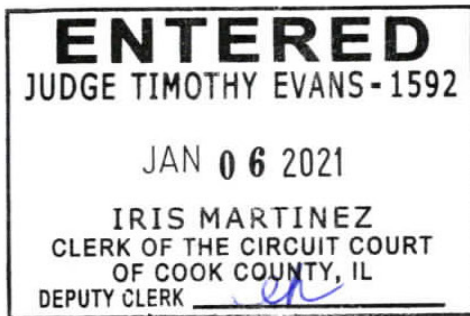
4. Create a new case category code for "Consumer Debt" cases, including any necessary e-filing changes and any other related codes;
5. Create a new e-filing and docket entry code to identify the notices under Sections II(B)(1)(c) and II(C)(1)(c) as "Notice of Early Resolution Program;"
6. Add the form summons in Attachment 2 (including the ERP Flyer) to this order to the Clerk's form template website, along with any other template orders or forms as may be developed by the Office of the Chief Judge for the ERP; and
7. Provide audit reports as may be requested by the Office of the Chief Judge.

ENTERED:



Timothy C. Evans
Chief Judge

Dated: January 6, 2021



ATTACHMENT 1

EARLY RESOLUTION FLYERS TO BE ATTACHED TO SUMMONS
AND
NOTICE OF EARLY RESOLUTION PROGRAM

Cook County **LEGAL AID** for Housing and Debt



*Helping you resolve eviction, foreclosure,
debt, and tax deed issues.*

FREE LEGAL HELP FOR RESIDENTS OF COOK COUNTY

Are you dealing with an eviction or unresolved debt issue?

Do you live in Cook County?

You are not in this alone. You may be eligible for FREE legal help.

Learn more by calling 855-956-5763 or visiting www.cookcountylegalaid.org

Evictions and unresolved debt issues can have a long-lasting, negative impact on your future. Call the **Early Resolution Program (ERP)** to speak with a lawyer and get connected to other resources. This program is available to all residents of Cook County free of charge. You do not need to have a case in court to get help.

You can use the program if:

- ▶ You are a renter and your landlord is trying to evict you;
- ▶ You are a landlord who is not represented by a lawyer;
- ▶ You were sued by someone who wants to collect an unpaid debt (for example a credit card company trying to collect unpaid charges); OR
- ▶ You need to sue someone who owes you money and do not have a lawyer.

The Early Resolution Program (ERP) includes free legal aid, mediation services, and connections to other resources including rental assistance. Mediation is a chance for a landlord and tenant, or debtor and creditor, to resolve issues with the help of a knowledgeable and neutral person.

The Early Resolution Program is being provided through Cook County Legal Aid for Housing and Debt (CCLAHD), a county-wide initiative to help resolve eviction, foreclosure, debt, and tax deed issues. Visit www.cookcountylegalaid.org for information about other programs and services.



CARPLS Legal Aid
Center for Conflict Resolution
Center for Disability & Elder Law
Chicago Volunteer Legal Services

Greater Chicago Legal Clinic
Lawyers' Committee for Better Housing
Legal Aid Chicago
Legal Aid Society

AYUDA LEGAL

para viviendas y deudas
del Condado de Cook



Ayuda para resolver problemas de desalojo, ejecución de hipotecas, deudas y escrituras de impuesto.

AYUDA LEGAL GRATUITA PARA RESIDENTES DE CONDADO DE COOK

¿Está enfrentando un problema de desalojo o deuda no resuelta?

¿Vive en el condado de Cook?

No está solo en esto. Puede ser elegible para recibir ayuda legal GRATIS.

Para obtener más información, llame al 855-956-5763 o visite www.cookcountylegalaid.org

Los problemas de desalojo y deudas no resueltas pueden tener un impacto negativo y duradero en su futuro. Llame al **Programa de Resolución Temprana** (ERP, Early Resolution Program) para hablar con un abogado y conectarse con otros recursos. Este programa está disponible para todos los residentes de condado de Cook sin costo. No es necesario que tenga un caso en tribunales para obtener ayuda.

Puede usar el programa si:

- ▶ es inquilino y el dueño intenta desalojarlo;
- ▶ es dueño y no tiene un abogado representante;
- ▶ recibió una demanda de alguien que desea cobrar una deuda no pagada (por ejemplo, una empresa de tarjetas de crédito intenta cobrar cargos no pagados); O BIEN
- ▶ necesita demandar a alguien que le debe dinero y no tiene un abogado.

El Programa de Resolución Temprana (ERP) incluye ayuda legal gratuita, servicios de mediación y conexiones con otros recursos, como ayuda de arrendamiento. La mediación es una oportunidad para que un dueño y un inquilino, o un deudor y un acreedor, resuelvan los problemas con la ayuda de una persona neutral y con conocimientos.

El Programa de Resolución Temprana se proporciona a través de Ayuda Legal para Vivienda y Deudas del Condado de Cook (CCLAHD, Cook County Legal Aid for Housing and Debt), una iniciativa en todo el condado para ayudar a resolver problemas de desalojo, ejecución de hipotecas, deudas y certificados de dominio de venta fiscal. Visite www.cookcountylegalaid.org para obtener información acerca de otros programas y servicios.



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Hrabstwo Cook POMOC PRAWNA na mieszkania i długi



Pomoc na rzecz rozwiązywania problemów związanych z eksmisją, zajmowaniem obciążonej hipoteki, długami oraz sprawami podatkowymi.

BEZPŁATNA POMOC PRAWNA DLA MIESZKAŃCÓW HRABSTWA COOK

**Czy borykasz się z widmem eksmisji lub nierozwiązaną kwestią zadłużenia?
Czy mieszkasz w hrabstwie Cook?**

Nie jesteś w tym sam(a). Może Ci przysługiwać BEZPŁATNA pomoc prawna.

**Uzyskaj więcej informacji, dzwoniąc pod numer 855-956-5763
lub odwiedzając stronę internetową www.cookcountylegalaid.org**

Sprawy takie jak eksmisja czy nierozwiązane kwestie zadłużenia mogą mieć długotrwały i negatywny wpływ na Twoją przyszłość. Skontaktuj się z personelem Early Resolution Program (ERP), aby porozmawiać z prawnikiem lub uzyskać dostęp do innych zasobów. Program ten jest nieodpłatnie dostępny dla wszystkich mieszkańców hrabstwa Cook. Nie musisz mieć sprawy w sądzie, aby uzyskać pomoc.

Możesz skorzystać z programu, jeśli:

- ▶ Wynajmujesz mieszkanie lub dom, a jego właściciel zamierza Cię eksmitować;
- ▶ Wynajmujesz komuś mieszkanie lub dom, a nie masz prawnika;
- ▶ Zostałeś/-aś pozwany/-a do sądu przez kogoś, kto chce od Ciebie ściągnąć niezapłacony dług (na przykład firma obsługująca karty kredytowe, której zalegasz z tytułu nieuiszczonych opłat);
LUB
- ▶ Zamierzasz pozwać kogoś, kto jest Ci dłużny pieniądze, a nie masz prawnika.

W ramach Early Resolution Program (ERP) możesz uzyskać dostęp do bezpłatnej pomocy prawnej, usług mediatora, a także innych form wsparcia, takich jak pomoc z czynszem. Mediacje to dla właściciela i najemcy bądź dłużnika i wierzyciela szansa na rozwiązanie problemów dzięki pomocy kompetentnego i bezstronnego specjalisty.

Projekt Early Resolution Program jest prowadzony w ramach Cook County Legal Aid for Housing and Debt (CCLAHD) — inicjatywy wdrożonej na terenie całego hrabstwa na rzecz rozwiązywania problemów związanych z eksmisją, zajmowaniem obciążonej hipoteki, długami oraz sprawami podatkowymi. Odwiedź stronę www.cookcountylegalaid.org, aby uzyskać informacje o innych programach i usługach.



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ATTACHMENT 2

EVICTIION SUMMONS

2120 - Served 2220 - Not Served
2121 - Alias Served 2221 - Alias Not Served
2620 - Sec of State 2621 - Alias Sec of State
Eviction Summons

(1/5/21) CCM 0081 A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

MUNICIPAL DEPARTMENT, _____ DISTRICT

_____	Case No. _____
Plaintiff(s)	Rent Amount Claimed: \$ _____
v.	Status Date: _____
_____	Time: _____ AM PM
Defendant(s)	Court Location: _____
_____	Room or Remote
Address of Defendant(s)	Call Information : _____
Please serve as follows: Sheriff Service Alias	

EVICITION SUMMONS

BEFORE YOU GO TO COURT, YOU MUST PAY YOUR APPEARANCE FEE

The Plaintiff(landlord/property owner), named above, has filed a complaint in this Court to have you evicted. A true and correct copy of the complaint is attached.

YOU ARE HEREBY SUMMONED to Court and you must appear for an initial case management at the time and place specified above. **YOU CAN (and should) APPEAR REMOTELY BY VIDEO OR TELEPHONE.** If you need help for going to court remotely or you need information for joining court remotely please go to www.cookcountycourt.org.

You are required to pay an appearance fee on or before the date of trial, not less than 7 days nor more than 40 days after issuance of summons. If you are unable to pay your court fees, you can apply for a fee waiver. For more information, you can visit www.illinoislegalaid.org or ask the Circuit Court Clerk's Office for a fee waiver application.

E-FILING IS NOW MANDATORY IN CIVIL CASES WITH LIMITED EXCEPTIONS. To electronically file (e-file) your appearance, you need access to the internet. Kiosks with internet access are available at all Clerk's Office locations. **To e-file, you must first create an account with an e-filing service provider. Visit <http://efile.illinoiscourts.gov/service-providers.htm> to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit <http://www.illinoiscourts.gov/FAQ/gethelp.asp>, or talk with your local circuit clerk's office.** If you cannot e-file, you may be able to get an exemption to file in-person or by mail. Visit www.cookcountyclerkofcourt.org or www.illinoislegalaid.org for exemption information.

IF YOU DO NOT FILE AN APPEARANCE or APPEAR FOR TRIAL, AN EVICTION ORDER may be entered against you for the relief requested in the complaint. If an Eviction Order is entered against you, the **SHERIFF MAY EVICT YOU** and, if requested in the Complaint, a money judgment may also be entered against you.

Iris Y. Martinez, Clerk of the Circuit Court of Cook County, Illinois
cookcountyclerkofcourt.org

INSTRUCTIONS TO SHERIFF

This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service and not less than seven (7) days before the trial date. If service cannot be made, this summons shall be returned so endorsed.

Witness: _____

Atty. No.: _____

Pro Se 99500

Name: _____

Atty. for (if applicable): _____

Iris Y. Martinez, Clerk of Court

Address: _____

City: _____

State: _____ Zip: _____

Telephone: _____

Primary Email: _____

Date of Service: _____

(To be inserted by officer on copy left with Defendant or
other person)

NOTICE TO DEFENDANTS**THIS IS AN EVICTION SUMMONS**

On the date and at the time shown on Page 1, the court will decide whether you will have to move or whether you can continue to stay. **YOU MUST BE ON TIME FOR COURT, EVEN IF YOU ARE APPEARING REMOTELY BY PHONE OR VIDEOCONFERENCE. HAVING TO GO TO WORK, BEING ILL, OR DOING SOMETHING ELSE DOES NOT MEAN YOU CAN MISS COURT. YOU MAY ACCESS LEGAL AID HELP BY CALLING 1-855-956-5763 OR BY VISITING COOKCOUNTYLEGALAID.ORG.**

IF YOU DO NOT PARTICIPATE IN COURT

The court may order you to move within a short period of time. IF YOU DO NOT MOVE, the plaintiff can have you and all of your belongings moved out. The plaintiff will put your property outside and you will have to make arrangements to move it.

YOU HAVE RIGHTS

1. You have the right to come to court and tell your side of the case.
2. You have a right to a trial by jury. A request for a jury trial must be in writing and filed with the Clerk of the Circuit Court prior to your hearing. You must request the jury trial immediately when your case is called, before your trial actually starts.
3. You may come to court and speak for yourself, or you may have a lawyer represent you. If you want a lawyer, you must get one right away. If you are unable to come to court for any reason, you should talk to a lawyer.
4. **YOU MAY ACCESS FREE LEGAL AID HELP BY CALLING 1-855-956-5763 OR BY VISITING COOKCOUNTYLEGALAID.ORG.** You may also contact one of the following legal aid agencies that may be able to provide you with free legal help:
 - CARPLS Legal Aid Hotline (www.carpls.org/): Call (312) 738-9200 for legal advice and referrals by phone.
 - Legal Aid Chicago (www.legalaidthicago.org/): Call (312) 341-1070 or apply online for legal help.
 - Lawyers' Committee for Better Housing (www.lcbh.org/): Call (312) 347-7600 to apply for legal help.
 - Cabrini Green Legal Aid (<http://cgla.net/>): Call (312) 738-2452 to apply for legal help if you are facing eviction or voucher termination based on alleged criminal activity or a criminal record.

You can learn more about eviction court and how to represent yourself by visiting Illinois Legal Aid Online at www.illinoislegalaid.org.

CLERK OF THE CIRCUIT COURT OF COOK COUNTY OFFICE LOCATIONS

Richard J Daley Center

50 W Washington

Chicago, IL 60602

District 2 - Skokie

5600 Old Orchard Rd

Skokie, IL 60077

District 3 - Rolling Meadows

2121 Euclid

Rolling Meadows, IL 60008

District 4 - Maywood

1500 Maybrook Ave

Maywood, IL 60153

District 5 - Bridgeview

10220 S 76th Ave

Bridgeview, IL 60455

District 6 - Markham

16501 S Kedzie Pkwy

Markham, IL 60428

Domestic Violence Court

555 W Harrison

Chicago, IL 60607

Juvenile Center Building

2245 W Ogden Ave, Rm 13

Chicago, IL 60602

Criminal Court Building

2650 S California Ave, Rm 526

Chicago, IL 60608

Daley Center Divisions/Departments

Civil Division

Richard J Daley Center

50 W Washington, Rm 601

Chicago, IL 60602

Hours: 8:30 am - 4:30 pm

Chancery Division

Richard J Daley Center

50 W Washington, Rm 802

Chicago, IL 60602

Hours: 8:30 am - 4:30 pm

Domestic Relations Division

Richard J Daley Center

50 W Washington, Rm 802

Chicago, IL 60602

Hours: 8:30 am - 4:30 pm

Civil Appeals

Richard J Daley Center

50 W Washington, Rm 801

Chicago, IL 60602

Hours: 8:30 am - 4:30 pm

Criminal Department

Richard J Daley Center

50 W Washington, Rm 1006

Chicago, IL 60602

Hours: 8:30 am - 4:30 pm

County Division

Richard J Daley Center

50 W Washington, Rm 1202

Chicago, IL 60602

Hours: 8:30 am - 4:30 pm

Probate Division

Richard J Daley Center

50 W Washington, Rm 1202

Chicago, IL 60602

Hours: 8:30 am - 4:30 pm

Law Division

Richard J Daley Center

50 W Washington, Rm 801

Chicago, IL 60602

Hours: 8:30 am - 4:30 pm

Traffic Division

Richard J Daley Center

50 W Washington, Lower Level

Chicago, IL 60602

Hours: 8:30 am - 4:30 pm

Iris Y. Martinez, Clerk of the Circuit Court of Cook County, Illinois

cookcountyclerkofcourt.org

Cook County **LEGAL AID** for Housing and Debt



*Helping you resolve eviction, foreclosure,
debt, and tax deed issues.*

FREE LEGAL HELP FOR RESIDENTS OF COOK COUNTY

Are you dealing with an eviction or unresolved debt issue?

Do you live in Cook County?

You are not in this alone. You may be eligible for FREE legal help.

Learn more by calling 855-956-5763 or visiting www.cookcountylegalaid.org

Evictions and unresolved debt issues can have a long-lasting, negative impact on your future. Call the **Early Resolution Program (ERP)** to speak with a lawyer and get connected to other resources. This program is available to all residents of Cook County free of charge. You do not need to have a case in court to get help.

You can use the program if:

- ▶ You are a renter and your landlord is trying to evict you;
- ▶ You are a landlord who is not represented by a lawyer;
- ▶ You were sued by someone who wants to collect an unpaid debt (for example a credit card company trying to collect unpaid charges); OR
- ▶ You need to sue someone who owes you money and do not have a lawyer.

The Early Resolution Program (ERP) includes free legal aid, mediation services, and connections to other resources including rental assistance. Mediation is a chance for a landlord and tenant, or debtor and creditor, to resolve issues with the help of a knowledgeable and neutral person.

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Hrabstwo Cook **POMOC PRAWNA** na mieszkania i długi



*Pomoc na rzecz rozwiązywania problemów związanych z eksmisją,
zajmowaniem obciążonej hipoteki, długami oraz sprawami podatkowymi.*

BEZPŁATNA POMOC PRAWNA DLA MIESZKAŃCÓW HRABSTWA COOK

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W ramach Early Resolution Program (ERP) możesz uzyskać dostęp do bezpłatnej pomocy prawnej, usług mediatora, a także innych form wsparcia, takich jak pomoc z czynszem. Mediacje to dla właściciela i najemcy bądź dłużnika i wierzyciela szansa na rozwiązanie problemów dzięki pomocy kompetentnego i bezstronnego specjalisty.

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Los problemas de desalojo y deudas no resueltas pueden tener un impacto negativo y duradero en su futuro. Llame al **Programa de Resolución Temprana** (ERP, Early Resolution Program) para hablar con un abogado y conectarse con otros recursos. Este programa está disponible para todos los residentes de condado de Cook sin costo. No es necesario que tenga un caso en tribunales para obtener ayuda.

Puede usar el programa si:

- ▶ es inquilino y el dueño intenta desalojarlo;
- ▶ es dueño y no tiene un abogado representante;
- ▶ recibió una demanda de alguien que desea cobrar una deuda no pagada (por ejemplo, una empresa de tarjetas de crédito intenta cobrar cargos no pagados); O BIEN
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El Programa de Resolución Temprana se proporciona a través de Ayuda Legal para Vivienda y Deudas del Condado de Cook (CCLAHD, Cook County Legal Aid for Housing and Debt), una iniciativa en todo el condado para ayudar a resolver problemas de desalojo, ejecución de hipotecas, deudas y certificados de dominio de venta fiscal. Visite www.cookcountylegalaid.org para obtener información acerca de otros programas y servicios.



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SPRINGFIELD, ILLINOIS

FILED
INDEX DEPARTMENT
DEC 11 2020
IN THE OFFICE OF
SECRETARY OF STATE

December 11, 2020

Executive Order 2020-74

EXECUTIVE ORDER 2020-74
(COVID-19 EXECUTIVE ORDER NO. 70)

WHEREAS, since early March 2020, Illinois has faced a pandemic that has caused extraordinary sickness and loss of life, infecting over 830,000, and taking the lives of more than 14,000 residents; and,

WHEREAS, as Illinois adapts and responds to the public health disaster caused by Coronavirus Disease 2019 (COVID-19), a novel severe acute respiratory illness that spreads rapidly through respiratory transmissions and that continues to be without an effective treatment or vaccine, the burden on residents, healthcare providers, first responders, and governments throughout the State is unprecedented; and,

WHEREAS, at all times but especially during a public health crisis, protecting the health and safety of Illinoisans is among the most important functions of State government; and,

WHEREAS, public health research and guidance indicates the necessity and efficacy of wearing cloth face coverings in public settings where social distancing measures are difficult to maintain, and indicates that the risk of transmission outdoors is less than the risk of transmission indoors; and,

WHEREAS, public health guidance advises that minimizing physical interactions between people who do not reside in the same household is critical to slowing the spread of COVID-19; and,

WHEREAS, as COVID-19 has spread in Illinois over the course of the Gubernatorial Disaster Proclamations, the circumstances causing a disaster throughout the State have changed and continue to change, making definitive predictions of the course the virus will take over the coming months extremely difficult; and,

WHEREAS, in addition to causing the tragic loss of more than 14,000 Illinoisans and wreaking havoc on the physical health of tens of thousands more, COVID-19 has caused extensive economic loss and continues to threaten the financial welfare of a significant number of individuals and businesses across the nation and the State; and,

WHEREAS, many executive agencies in the State have focused their limited resources on the

WHEREAS, the COVID-19 pandemic's disruption to the livestock market has required IDOA to concentrate its resources on working with livestock owners and producers in addressing safe and environmental animal disposal concerns through its oversight and regulation of the Dead Animal Disposal Act; and,

WHEREAS, IDOA regulates and investigates many other industries that have been directly impacted by the COVID-19 pandemic including, but not limited to, pesticide applicators, animal shelters, pet shops, and gas stations, and the continued, proper regulation of these industries requires IDOA to commit additional time and resources into creating new procedures for conducting remote investigations and trainings; and,

WHEREAS, the COVID-19 pandemic's detrimental impact to IDOA's regulated industries has required IDOA to place additional time and resources into organizing and managing the timely implementation of the Business Interruption Grant Program; and,

WHEREAS, on December 11, 2020, considering the expected continuing spread of COVID-19 and the ongoing health and economic impacts that that will be felt over the coming month by people across the State, I declared all counties in the State of Illinois as a disaster area; and,

WHEREAS, in response to the epidemic emergency and public health emergency described above, I find it necessary to re-issue Executive Orders 2020-03, 2020-04, 2020-07, 2020-08, 2020-09, 2020-11, 2020-12, 2020-15, 2020-16, 2020-17, 2020-20, 2020-21, 2020-22, 2020-23, 2020-24, 2020-25, 2020-26, 2020-27, 2020-28, 2020-29, 2020-30, 2020-34, 2020-35, 2020-36, 2020-40, 2020-41, 2020-42, 2020-45, 2020-47, 2020-50, 2020-53, 2020-56, 2020-57, 2020-60, 2020-61, 2020-62, 2020-63, 2020-64, 2020-65, 2020-66, 2020-67, 2020-68, 2020-69, 2020-70, 2020-72, and 2020-73 and hereby incorporate the WHEREAS clauses of those Executive Orders;

THEREFORE, by the powers vested in me as the Governor of the State of Illinois, pursuant to the Illinois Constitution and Sections 7(1), 7(2), 7(3), 7(8), 7(9), and 7(12) of the Illinois Emergency Management Agency Act, 20 ILCS 3305, and consistent with the powers in public health laws, I hereby order the following, effective December 11, 2020:

Part 1: Re-Issue of Executive Orders.

Executive Orders 2020-03, 2020-04, 2020-07, 2020-08, 2020-09, 2020-11, 2020-12, 2020-15, 2020-16, 2020-17, 2020-20, 2020-21, 2020-22, 2020-23, 2020-24, 2020-25, 2020-26, 2020-27, 2020-28, 2020-29, 2020-30, 2020-34, 2020-35, 2020-36, 2020-40, 2020-41, 2020-42, 2020-45, 2020-47, 2020-50, 2020-53, 2020-56, 2020-57, 2020-60, 2020-61, 2020-62, 2020-63, 2020-64, 2020-65, 2020-66, 2020-67, 2020-68, 2020-69, 2020-70, 2020-72, and 2020-73 as follows:

Executive Order 2020-04 (Closure of James R. Thompson Center; waiver of sick leave requirement for State employees):

Sections 2 and 3 of Executive Order 2020-04 are re-issued and extended through **January 9, 2021**. Nothing in Section 2 precludes the Department of Central Management Services from designating specific points of ingress and egress and controlling traffic flow in the James R. Thompson Center for State employees, members of the public attending to State business, and members of the public patronizing the businesses and food court.

Executive Order 2020-07 (In-person meeting requirements):

Section 6 of Executive Order 2020-07, as amended by Executive Order 2020-33 and Executive Order 2020-44, is re-issued and extended through **January 9, 2021**.

Executive Order 2020-08 is further amended and revised as follows:

Section 6. The provisions of the Illinois Vehicle Code, 625 ILCS 5, providing for the expiration of vehicle registrations and licenses are suspended as follows: (1) all motor vehicle registrations that expire in November 2020 or December 2020 are extended; and (2) all licenses issued pursuant to Chapter 3, Article IX, Remittance Agents, and Chapter 5, Dealers, Transporters, Wreckers and Rebuilders, that expire on December 31, 2020, are extended if an application to renew the license is received by the Office of the Secretary of State by December 31, 2020.

Executive Order 2020-09 (Telehealth):

Executive Order 2020-09, as amended by Executive Order 2020-52, is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-11 (Illinois Department of Corrections notification period):

Section 4 of Executive Order 2020-11 is re-issued and extended through January 9, 2021.

Executive Order 2020-12 (Health care worker background checks; Illinois Department of Juvenile Justice notification period):

Sections 1 and 3 of Executive Order 2020-12 are re-issued and extended through January 9, 2021.

Executive Order 2020-15 (Suspending provisions of the Illinois School Code):

Sections 5, 6, 7, 8, and 9 of Executive Order 2020-15 are re-issued and extended through January 9, 2021.

Executive Order 2020-16 (Suspension of classroom training requirement for security services):

Section 2 of Executive Order 2020-16 is re-issued and extended through January 9, 2021.

Executive Orders 2020-03 and 2020-17 (Cannabis deadlines and applications):

Executive Orders 2020-03 and 2020-17, as modified by Executive Order 2020-18, are re-issued and shall remain in effect as specified by Executive Order 2020-18.

Executive Order 2020-20 (Public assistance requirements):

Executive Order 2020-20 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-21 (Furlough of Illinois Department of Corrections inmates):

Executive Order 2020-21 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-22 (Placements under the Child Care Act of 1969; fingerprint submissions under Health Care Worker Background Check Act):

Sections 4, 5, and the Savings Clause of Executive Order 2020-22 are re-issued and

Executive Order 2020-23 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-24 (Illinois Department of Human Services Forensic Treatment Program; investigations of Illinois Department of Human Services employees):

Executive Order 2020-24 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-25 (Garnishment and wage deductions):

Executive Order 2020-25, as amended by Executive Order 2020-55, is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-26 (Hospital capacity):

While several sections of Executive Order 2020-26 had previously been rescinded, Executive Order 2020-26 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-27 (Cadavers testing positive for COVID-19):

Executive Order 2020-27 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-28 (Industrial radiography certifications):

Executive Order 2020-28, as amended by Executive Order 2020-55, is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-29 (In-person education or exams for professional insurance licenses):

Executive Order 2020-29 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-30 (Expired consular identification documents; electronic filings for the Illinois Human Rights Commission):

Sections 1, 4, 5, and 6 of Executive Order 2020-30 are re-issued and extended through January 9, 2021.

Executive Order 2020-34 (Cannabis requirements):

Executive Order 2020-34 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-35 (Illinois Department of Public Health regulatory activities):

Sections 14, 15, 16, and 17 of Executive Order 2020-35 are re-issued and extended through January 9, 2021.

Executive Order 2020-36 (Marriage licenses):

January 9, 2021.

Executive Order 2020-41 (Sports wagering):

Executive Order 2020-41 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-42 (State Fairs):

Executive Order 2020-42 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-45 (Cannabis licenses):

Executive Order 2020-45 is re-issued in its entirety and shall remain in effect as specified by Executive Order 2020-45.

Executive Order 2020-47 (In-person instruction at preK-12 schools):

Executive Order 2020-47 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-50 (Resuming transfers from county jails to Illinois Department of Corrections):

Executive Order 2020-50 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-53 (Region 7 mitigations):

Executive Order 2020-53 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-56 (Region 1 mitigations):

Executive Order 2020-56 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-57 (Cannabis identification cards):

Executive Order 2020-57 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-60 (Region 5 mitigations):

Executive Order 2020-60 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-61 (Regions 7 and 8 mitigations):

Executive Order 2020-61 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-62 (Region 1 Tier 2 mitigations):

Executive Order 2020-62 is re-issued in its entirety and extended through January 9,

Executive Order 2020-64 (Region 11 mitigations):

Executive Order 2020-64 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-65 (Region 9 mitigations):

Executive Order 2020-65 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-66 (Region 3 mitigations):

Executive Order 2020-66 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-67 (Region 6 mitigations):

Executive Order 2020-67 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-68 (Cannabis registry identification card renewals):

Executive Order 2020-68 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-69 (Region 2 mitigations):

Executive Order 2020-69 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-70 (Regions 5, 7, and 8 Tier 2 mitigations):

Executive Order 2020-70 is re-issued in its entirety and extended through January 9, 2021.

Executive Order 2020-72 (Residential eviction moratorium):

Executive Order 2020-72, as amended and revised below, is re-issued in its entirety and extended through January 9, 2021.

Section 1. For purposes of this Executive Order, the following terms are defined as set forth below:

- (a) "Covered Person" means any tenant, lessee, sub-lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or other person or entity with a legal right to pursue an eviction or possessory action, a Declaration under penalty of perjury indicating that:
 - 1. the individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment pursuant to Section 2001 of the CARES Act;
 - 2. the individual is unable to make a full rent or housing payment due to a COVID-19 related hardship including, but not limited to, substantial loss

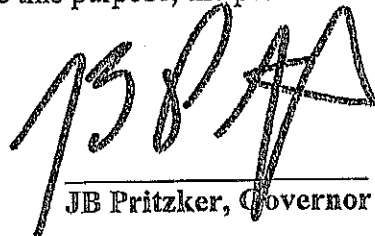
4. eviction would likely render the individual homeless—or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options.
- (b) “Declaration” means the form declaration made available by the Illinois Housing Development Authority (or a similar declaration under penalty of perjury) that tenants, lessees, sub-lessees, or residents of residential properties who are covered by this Executive Order may use to invoke the protections of this Executive Order. Each landlord, owner of a residential property, or other person or entity with a legal right to pursue an eviction or possessory action must provide each tenant, lessee, sub-lessee, and resident with a Declaration at least 5 days prior to commencement of any residential eviction proceeding including, but not limited to, at least 5 days prior to the issuance of a notice of termination of tenancy. Service of the Declaration must conform with the requirements of 735 ILCS 5/9-211.
- (c) “Non-Discretionary Expenses” include, but are not limited to, food, utilities, phone and internet access, school supplies, cold-weather clothing, medical expenses, child care, and transportation costs, including car payments and insurance.

Section 7. A person or entity may not commence a residential eviction action pursuant to or arising under 735 ILCS 5/9-101 et seq. against a tenant who does not owe rent unless the tenant poses a direct threat to the health and safety of other tenants or an immediate and severe risk to property. A tenant shall not be required to provide a Declaration if they are covered by this section.

Executive Order 2020-73 (Tier 3 mitigations):

Executive Order 2020-73 is re-issued in its entirety and extended through January 9, 2021.

Part 2: Savings Clause. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.


JB Pritzker, Governor

Issued by the Governor December 11, 2020
Filed by the Secretary of State December 11, 2020

FILED
INDEX DEPARTMENT
DEC 11 2020
IN THE OFFICE OF
SECRETARY OF STATE

APPENDIX A

IN THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT FOR COOK COUNTY, ILLINOIS

_____)	
Plaintiff(s))	
)	
v.)	Case No.
)	
_____)	
Defendant(s))	

Plaintiff's Certification of Compliance with the Governor's Executive Order on Evictions

I, _____, hereby state as follows: (check all applicable box(es))

1. I am: ☐ The named plaintiff; or ☐ An Agent of the named plaintiff.
2. The filing of this eviction case does not violate the Governor's Executive Order 2020-72, as amended by Executive Order 2020-74 and any subsequent executive order extending or reissuing Executive Order 2020-72 (together, the "Executive Order"), because:
- a. One or more of the following applies:
- ☐ The defendant(s) poses a direct threat to the health and safety of other tenants;
 - ☐ The defendant(s) poses an immediate and severe risk to property; and/or
 - ☐ The property at issue is non-residential;

OR

- b. Prior to commencing the action:
- ☐ I served each defendant with a form declaration made available by the Illinois Housing Development Authority (or a similar declaration under penalty of perjury) on _____; and
 - ☐ I did not receive a qualifying declaration from any of the defendant(s) that they qualify as a "Covered Person" under the Executive Order before filing this action.

I certify that everything in this certification is true and correct. I understand that making a false statement is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Sworn:

Date

Plaintiff (or Agent) (spell name)

Plaintiff (or Agent) (signature)

COVID-19 RULE CHANGES AFFECTING EVICTIONS

I. STATE OF ILLINOIS GOVERNOR'S EXECUTIVE ORDERS (The Gubernatorial Disaster Proclamation started on 3-9-20. See, Executive Order 2020-4; 2020-29); (This outline is current through Exec. Order 2021-01); Current Moratorium ends 2-6-21.

<https://www2.illinois.gov/government/executive-orders>

1. Law Enforcement Officers cannot **Enforce** any Eviction Orders on any **Residential** property until after the termination of the Gubernatorial Disaster Proclamation period (**2-6-21**), unless the tenant poses a direct threat to the health and safety of other tenants, an immediate and severe risk to property, or a violation of any building code, health ordinance, or similar regulation. Executive Orders 2020-30; 2021-01 (however, sec. 3 of 2020-30 not extended). The Sheriff may enforce evictions **Non-Residential (Commercial) property after 8-22-20.** (2020-48).

2. A person may not **Commence** (file) a **Residential** eviction against a tenant unless that tenant poses a direct threat to the health and safety of other tenants, an immediate and severe risk to property, or a violation of any building code, health ordinance, or similar regulation. The tenant still has the obligation to pay rent and comply with the lease. Executive Order 2020-30; 2020-74; (**Effective April 23, 2020 through November 12, 2020**).

3. **Tenant's Declaration of a Covered Person:** As of **November 13, 2020**, A person or entity may not commence a **Residential** eviction against a "**Covered Person**" unless that person poses a direct threat to the health and safety of other tenants or an

immediate and severe risk to property. Executive Order 2020-72 (eff. 11-13-20); 2021-1.

As of **11-13-20** (2020-72) the Landlord must provide the Tenant and the Tenant must return to the Landlord a **Tenant's Declaration** in order for the Tenant **to be considered a Covered Person** and to invoke the protections of the Moratorium.

A "Covered Person" means any tenant, lessee, sub-lessee, or resident of a residential property who provides to their landlord, or other person or entity with a legal right to pursue an eviction or possessory action, a Declaration (Tenant's Declaration). Executive Order 2020-72; 2020-74. (2020-72 eff. 11-13-20 incorporated this expanded definition from just "tenant"). *It can be argued that this expanded language (eff. 11-13-20) applies the Eviction Moratorium to Home Owners Associations. Judges in Will, Kane, and Cook (Rolling Meadows) apply the Moratorium to Home Owners Associations.*

If the eviction is based upon direct threat or risk to property, the Tenant SHALL NOT be required to provide a Tenant's Declaration. 2020-74.

As of December 11, 2020, the Landlord or other person or entity with a legal right to pursue an eviction or possessory action must provide each tenant, lessee, sub-lessee, and resident with a Declaration (Tenant's Declaration) **at least 5 days prior to** the service of a **Demand Notice** or **at least 5 days prior to the Commencement (filing) of a Residential Eviction** [if no prior demand is necessary]. Said service of the Tenant's Declaration on the tenant by the landlord must comply with the requirements of serving a Demand Notice. Executive Order 2020-74.

II. ILLINOIS SUPREME COURT

A. ILL. SUP. CT. RULE 139

1. Any Eviction case filed after **July 17, 2020**, shall attach a copy of the Demand Notice and proof of service thereof to the Complaint at the time of filing. If Plaintiff does not have it, they may submit an Affidavit instead using the standardized form.

2. If the Eviction is based on a written lease and is brought pursuant to a 10 Day Demand Notice (violation of the lease other than non-payment of rent), then the applicable portion of the lease shall also be attached to the Complaint at the time of filing. If Plaintiff does not have it, they may submit an Affidavit instead using the standardized form.

B. M.R. 30370 Dated December 22, 2020

1. A **Plaintiff's Certification of Compliance with the Governor's Executive Order on Evictions form** must accompany the Complaint in **ANY EVICTION CASE**. If said form is not filed or if it does not comply with the Governor's Executive Order, the Court shall dismiss the case, without prejudice, seal the record, and not issue the Summons.

The case may be re-filed under a **new case number** (when no longer barred by the Executive Order), and the new filing fee may be waived.

C. M.R. 30370 dated 5-22-20 (Expired 8-24-20)

1. With regard to any property that has a Federally Backed Mortgage (Fannie Mae, Freddie Mac), or is part of HUD, Sec. 8, Subsidized Housing, **no** eviction Complaints can be filed until 8-24-20.

2. **In All Residential Evictions**, the Complaint or supporting **Affidavit** (the form of which is attached to the M.R. 30370 dated 5-22-20) must affirmatively state whether the premises has **a Federally Backed Mortgage (Fannie Mae, Freddie Mac), or is part of HUD, Sec. 8, Subsidized Housing (a "covered dwelling"** under M.R. 30370 dated 5-22-20).

Any Residential Eviction filed after March 27, 2020, must have an Amended Complaint or supplemental supporting **Cares Act Affidavit** that complies with this paragraph. **This paragraph expired on August 24, 2020.**

If the Plaintiff fails to comply with this paragraph, the Plaintiff must provide testimony under oath as to whether the property has a Federally Backed Mortgage (Fannie Mae, Freddie Mac), or is part of HUD, Sec. 8, Subsidized Housing (a "covered dwelling" under M.R. 30370 dated 5-22-20). (This is the least desirable option, because there is no Court Reporter in C-307).

3. If an eviction action involving a "covered dwelling" is improperly brought, and the basis for the eviction is the non-payment of rent, the Complaint shall be dismissed, and the Judge shall seal the file.

IV. FEDERAL CARES ACT (Public Law 116-136; HR 748)
(Effective 3-27-20) (120 day Eviction Moratorium expired on
7-24-20. However, the 30 Day Demand Notice did not expire)

Please note that the Federal Eviction Moratorium does not apply while the Illinois Governor's Executive Orders still apply a State Moratorium on evictions.

A. Landlords of Residential Multi-Family Property designed for 5 or more families with a Federally backed Mortgage Loan (Section 4023)

1. Only applies to Federally backed Mortgage Loans, which consist of FHA, Fannie Mae, Freddie Mac, etc.
2. A Borrower may request a forbearance for up to 30 days and can get an extension for up to 2 additional 30 day periods.
3. A Borrower that receives a forbearance under this Section **may not**, for the duration of the forbearance:
 - i) initiate an eviction or evict a tenant solely for non-payment of rent or other fees and charges.
 - ii) charge any late fees or other penalties for late payment of rent.
 - iii) serve a Demand Notice for possession until after the forbearance period expires. And then, said Demand Notice must be a 30 Day Demand Notice.
4. A Borrower may discontinue the forbearance at any time.

B. Landlords of Residential Units occupied by a Tenant with or without a lease where the property is covered by a Federally backed Mortgage Loan (FHA, Fannie Mae, Freddie Mac, etc.), HUD, Section 8, Subsidized Housing (Section 4024)

1. A Landlord **cannot until after 8-31-20:**

i) charge late fees or other penalties due to non-payment of rent.

ii) issue a Demand Notice for possession. And then, said Demand Notice must be a 30 Day Demand Notice.

iii) file an Eviction action in Court based on non-payment of rent or other charges.

2. In essence, no eviction can be filed with regard to a property covered under this section until 9-31-20.

3. The moratorium on filing a Federally backed Mortgage or Subsidized Housing eviction for 120 days provision **expired on July 24, 2020. However, the **30 Day Demand** provision did not expire (no “sunset provision”).**

C. Loan Servicers of Residential Property designed for 1-4 Families with a Federally backed Mortgage Loan (Section 4022)

1. Only applies to Federally backed Mortgage Loans, which consist of FHA, Fannie Mae, Freddie Mac, etc.

2. Does not apply to vacant or abandoned property.

3. Includes condos designed for 1-4 families.
4. The Borrower may request a forbearance for up to 180 days and may extend the forbearance for an additional 180 days.
5. Loan Servicer may not execute a foreclosure related eviction until after 8-31-20.

LIST OF REQUIRED DOCUMENTS FOR ALL NEWLY FILED EVICTIONS

1. Plaintiff's Certification of Compliance with the Governor's Executive Order on Evictions. Required in ANY eviction case. (Judge's preview of file before Summons is issued).
2. Tenant's Declaration (must be provided to each tenant at least 5 days prior to the service of a Demand Notice (or at least 5 days prior to commencing a residential eviction if no prior Demand is required). Must be served in same manner as a Demand Notice. Proof of Service thereof should be provided. Tenant's Declaration not required if eviction is based on a direct threat to health and safety of other tenants or an immediate and severe risk to property.
3. Proof of Service from tenant that he provided the completed Tenant's Declaration to the landlord.
4. Demand Notice and Proof of Service thereof. 30 Day Demand required for Federally backed Mortgage properties or Subsidized Housing. If utilizing a 10 Day Demand, the applicable portion of the lease that was violated or an Affidavit shall be attached to the Complaint.
5. Complaint. Should contain facts regarding any alleged exception to the Moratorium.
6. Military Affidavit.
7. Copy of Summons.

PRACTICE POINTERS

1. If the landlord is evicting for cause (direct threat, risk to property, etc.), the complained of behavior should be detailed in the Demand Notice, and it should be a 10 Day Demand Notice.
2. Landlords should have a witness present when serving the Tenant's Declaration and Demand Notice upon the tenant. Tenants should have a witness present when serving the completed Tenant's Declaration back on the Landlord. This will help if one or the other denies receiving said documents.
3. Either create your own Complaint or add a page or two to the form Eviction Complaint detailing the basis of the eviction. Detail the direct threats, risk to property, or that the Landlord served the Tenant's Declaration upon the Tenant (have the Declaration and proof of service thereof as an exhibit to the Complaint), and the Tenant failed to return it to the Landlord. The Tenant needs to be on notice of the basis of the eviction. The classic, traditional eviction Complaint no longer has sufficient detail in these days of COVID.
4. Always check the "unknown occupants" box.

Outline Prepared by: Judge Michael Betar
19th Judicial Circuit (Lake County)

**[FORM] DECLARATION UNDER PENALTY OF PERJURY FOR
STATE OF ILLINOIS EXECUTIVE ORDER 2020-72**

This declaration is for tenants, lessees, sub-lessees, and residents of residential properties who are covered by State of Illinois Executive Order 2020-72 ("EO 2020-72") temporarily halting residential evictions (not including foreclosures on home mortgages) to prevent the further spread of COVID-19. Pursuant to EO 2020-72, you must provide a copy of this declaration to your landlord, owner of the residential property where you live, or any other person or entity who has a right to have you evicted or removed from where you live in order to invoke the protections of EO 2020-72. Each adult listed on the lease, rental agreement, or housing contract should complete this declaration. EO 2020-72 prohibits any person who submits this declaration from being evicted or removed from their residence through December 12, 2020, unless the person poses a direct threat to the health and safety of other tenants or an immediate and severe risk to property. EO 2020-72 may be amended or extended. EO 2020-72 does not relieve you of the obligation to pay rent or comply with any other obligation that you may have pursuant to your lease or rental agreement. This declaration is sworn testimony, meaning that you can be prosecuted, go to jail, or pay a fine if you lie, mislead, or omit important information.

I certify under penalty of perjury, pursuant to 720 ILCS 5/32-2, that the foregoing are true and correct:

- I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment pursuant to Section 2001 of the CARES Act;
- I am unable to make a full rent or housing payment due to a COVID-19 related hardship including, but not limited to, substantial loss of income, loss of compensable hours of work or wages, or an increase in out-of-pocket expenses directly related to the COVID-19 pandemic;
- I am using best efforts to make timely partial payments that are as close to the full payment as my circumstances may permit, taking into account other non-discretionary expenses;¹ and
- If evicted, I would likely become homeless, or be forced to move into and live in close quarters in a new congregate or shared living setting because I have no other available housing options.
- I understand that I must still pay rent or make a housing payment, and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.
- I further understand that at the end of this temporary halt on evictions, my landlord, the owner of the residential property where I live, or any other person or entity who has a right to have me evicted or removed from where I live, may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to state laws and local ordinances.

I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.

Signature of Declarant

Date

¹ "Non-discretionary expenses" include, but are not limited to, food, utilities, phone and internet access, school supplies, cold-weather clothing, medical expenses, child care, and transportation costs, including car payments and insurance.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
FIRST MUNICIPAL DISTRICT
GENERAL ORDER 2020-27

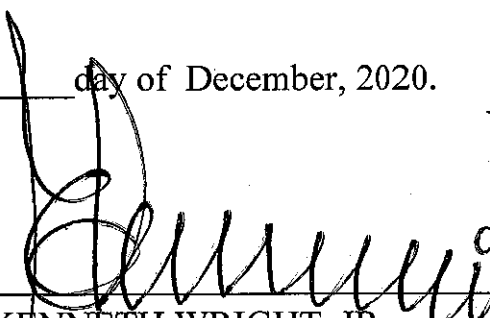
Declaration of Covered Persons in Eviction

WHEREAS, in light of the COVID-19 pandemic and to protect the health and safety of the public and court personnel, recent eviction proceedings were occurring only in the categories of Commercial and Emergency cases where a tenant posed a direct threat to the health and safety of the tenants, or an immediate and severe risk to property, or a violation of any law or regulation. Currently, a residential eviction may not occur if the tenant completes a form provided by the landlord, Declaration of Covered Persons that demonstrates that the tenant is subject to a COVID-19 exemption from a residential eviction if certain conditions are present.

WHEREAS, though the eviction moratorium has been extended, eviction cases may be filed under the circumstances delineated above. Prior to and as a condition of filing any eviction action against a tenant, any landlord, owner of residential property or other person(s) who has the right to have a tenant evicted must first comply with City, State and Federal requirements.

IT IS HEREBY ORDERED, all landlords, owners of residential property or other persons who have the right to have a tenant evicted for nonpayment of rent must first provide tenant(s) a Declaration of Covered Persons (sample attached) or equivalent, an affidavit by the landlord stating the manner of service of the Declaration provided to the tenant, signed by the landlord and specifying a reasonable time for the tenant to return the declaration to the landlord indicating status as a Covered Person. The returned Declaration should be signed by the tenant, indicating not subject to eviction.

Dated at Chicago, Illinois this _____ day of December, 2020.



E. KENNETH WRIGHT, JR.
PRESIDING JUDGE
FIRST MUNICIPAL DISTRICT

Presiding Judge
E. Kenneth Wright, Jr.
DEC 04 2020
Circuit Court-1624

SESSION SIX

Coming Attractions: Changes to the Room 1401 Standing Order on the Horizon

The Hon. James E. Hanlon, Jr.

Associate Judge, Municipal Department, District 1

Coming Attractions: Changes to the Room 1401 Standing Order on the Horizon

Judge James E. Hanlon, Jr.

February 15, 2021

Illinois Creditor's Bar Association

Key Changes to Room 1401 Standing Order

- Eliminates the 8:45 a.m. Routine Motion Call
 - Created too much confusion and caused too many people to appear on Zoom at a time when we do not conduct hearings
- Provides a category of matters that can be submitted for entry without a motion
 - Really just formalizes an ongoing informal practice
- Clarifies the practice for Notice of Motions (all Motions)
 - All hearings (other than judgment debtor Citation examinations and Replevin Return Dates) are now by “request” only (with the Court setting all dates and times)
- Cleans up ambiguities and inconsistencies
 - Too many to mention!
- Single email address for all communications, submissions, requests!
 - Room1401Hearings@gmail.com

Changes Needed to Clerk's System

- Clerk's Office promises to change system so that third-party Citations no longer get a time (only an answer date)
 - Important because otherwise third-party Citations would take up the ten available Citation slots per half hour
- Eliminate the 8:45 Motion call option
- Communicate new process to all public-facing Deputy Clerks

Other Key Factors to a Successful Experience in Room 1401

- File submission protocol
 - Two files, one for supporting materials (motions, exhibits, proof of service, Certification) and one for the proposed Order
- File-naming convention
 - Start with case number (e.g., 20 M1 192388 Docs and 20 M1 192388 Order)
 - Why that's important: sorting and workflow
- Zoom protocol
 - Have your microphone and speaker on before you enter the virtual courtroom
 - Have your case number ready when Chuck or Ashwin bring you in to check-in
 - Don't need to appear if all you need is an Alias anything or a dismissal: just submit your proposed Order to Room1401Hearings@gmail.com

Open to Other Changes

- Number of Citation examinations slots may expand
 - Unserved Citations represent lost opportunity to use all ten slots per half-hour
- Impact of consumer collection and residential eviction judgments entering the pipeline after the Governor's moratorium is lifted
 - Unknown factor, and we will adjust as needed
 - May need two Judges in Room 1401, as Zoom is often slower than traditional in-court proceedings!
- Workflow concerns on your end
 - I appreciate the concern that lawyers once had to know only the Code of Civil Procedure and now must know dozens of different Standing Orders, Courtroom-specific Orders and Rules, and the like. Tell us the best practices, and we will adopt and adapt!

QUESTIONS, COMMENTS, CRITICISMS?

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT—FIRST DISTRICT**

Case caption

Notice of Motion and Right to Request Remote Hearing Via Zoom

The attached [insert title of Motion] has been filed with the Court. Under the current Standing Order of the Court, there will not be hearing on the attached Motion unless you request one by [insert the date that is at least 7 business days after the date the Notice is mailed, excluding the date of mailing]. If you do not request a hearing, the Court may rule upon the motion without your input. To request a hearing, you must contact both counsel for [the movant] and the Court by email or through phone as follows:

- a. Attorney for [Plaintiff/Defendant]: At the following email address (_____) or phone number (____-____-____).
- b. Court: Email address: Room1401Hearings@gmail.com or phone number: (312) 603-4372 (Courtroom 1401 Clerk)
- c. You must communicate the following information to the [plaintiff/defendant] and to the Court:
 - i. The case name and number;
 - ii. The Court or Return Date listed on the summons or other notice;
 - iii. Your name;
 - iv. An email address where you may be reached;
 - v. A phone number where you may be reached; and
 - vi. Any need for a translator to be present for the hearing (specifying the native language of the defendant/judgment debtor).
- d. Once you contact the [plaintiff/defendant] and the Court and supply the above information, the Court, in turn, will provide the parties with a date and time for either a telephonic conference call or a video conference.

- e. The matter will be handled remotely during the telephonic or Zoom video conference hearing.
- f. If you fail to appear during the remotely conducted hearing you requested, an order may be entered against you that adversely affects your interest.
- g. Similarly, if you do not request a hearing by [insert the date that is at least 7 business days after the date the Notice is mailed, excluding the date of mailing] – an order may be entered that adversely affects your interest.

Additional information about this process, your rights in this process, and sources of legal aid assistance are available at the Room 1401 page of the Court's website: <https://bit.ly/Room1401DaleyCenter>

Dated:

Respectfully submitted,

By: _____
One of its attorneys

**CIRCUIT COURT OF COOK COUNTY, ILLINOIS
FIRST MUNICIPAL DISTRICT, CIVIL DIVISION
POST-JUDGMENT and MISCELLANEOUS REMEDIES SECTION, ROOM 1401**

STANDING ORDER

Considering the current world pandemic caused by the COVID-19 virus, the Court recognizes the continuing need to create as safe of an environment as possible for parties and counsel to conduct their business before the Court. The terms of this Order are designed to (a) allow litigants to advance their cases without having to physically appear in court to conduct some of that business, (b) facilitate the conduct of contested hearings remotely, and (c) continue to provide court access, information, and court services to all parties, particularly pro se litigants.

Notwithstanding anything in this Standing Order to the contrary, any pro se litigant may, if they so choose, appear in-person in Room 1401 at any otherwise telephonic or Zoom hearing scheduled by the Court (while the other participants may appear remotely).

The Effective Date of this Order is February __, 2021, and the Order will remain in place until further Order of the Court. This Order supersedes the Standing Order of June 24, 2020.

The following constitutes the Standing Order for the Post Judgment & Miscellaneous Remedies Section of the First Municipal Division.

I. MOTIONS and PROPOSED ORDERS

1. These matters are “Routine Matters” that will be handled by an in Chambers review of proposed Orders submitted to Room1401Hearings@gmail.com, without the need for a motion. The party submitting the proposed Order shall copy all parties on the email or, if any parties’ email address is not known, the submitting party shall send a copy of the proposed Order to such other party by regular U.S. mail. All proposed Agreed Orders must contain the signature of each party or its counsel to reflect that party’s agreement to the entry of the Order. Electronic signatures and side letters or emails will suffice.
 - Agreed scheduling or dismissal Orders
 - Judgment creditor’s dismissal of a wage garnishment, a non-wage garnishment, a citation to discover assets, a third-party citation to discover assets
 - Judgment creditor’s dismissal of a rule to show cause
 - Judgment creditor’s dismissal of a body attachment order
 - Orders granting defendant/debtor’s exemption claim
 - Memorandum of Judgment submitted by the judgment creditor

- Judgment creditor's request to vacate or dismiss a memorandum of judgment
- Satisfaction (Release) of Judgment filed by the judgment creditor
- Order appointing a special process server

2. . The protocol for the presentation of any Motion is as follows:

- a.** The moving party must e-file and serve the motion in the usual and customary manner prescribed by statute and court rules.
- b.** Instead of a traditional Notice of Motion indicating a presentment date and time, the moving party shall serve a Notice of Motion in the form attached as Appendix B – 2. The Notice advises adverse parties of their right to request a hearing on the Motion. The Notice shall provide the date by which the respondent may request a hearing, and that date must be at least seven business days after the date the Notice is mailed, excluding the date of mailing.

(i) If a request for hearing is made, the Court will set the date and time for the hearing and advise the parties. The movant shall be responsible for submitting an Order reflecting the date and time the Court set for the hearing.

(ii) If no hearing request has been made by the date specified in the Notice of Motion the moving party must then email a copy of the motion and supporting materials, which must include the Certification in the form attached as Appendix D (together in a single pdf file) and the proposed order (in a separate, stand-alone pdf file) to the Court at Room1401Hearings@gmail.com. The subject line of the email must include the title of the motion and case number. If Court concludes that the relief requested is adequately supported and appropriate, (a) the Court will sign the Order, (b) the Clerk will enter the Order, and (c) the Court will transmit a copy of the signed and entered Order by email to all counsel and parties at the email addresses provided by the moving party.

c.

- 3.** If the moving party believes its Motion needs to be presented on an emergency basis, it must email (with copies to all parties or their counsel) the Motion and supporting materials (in a single pdf file) to Room1401Hearings@gmail.com. The Court will determine if the matter should be heard as an emergency or on a more typical schedule and set a hearing date and time accordingly.
- 1.** In all email communications to the Court, the party initiating the email communication must include as email recipients all other parties to the case.

1.

II. Specific Matters Handled by the Post Judgment & Miscellaneous Remedies Section

1. Citations to Discover Assets Served on Judgment Debtors

Citations to Discover Assets conducted under 735 ILCS 5/2-1402 ordinarily were formerly handled in person on Monday through Friday at 9:30 a.m. in Courtroom 1401 in the Daley Center. During the period when this Standing Order is in force, citation examinations of judgment debtors **will not be conducted in person** but instead will be conducted remotely via either telephonic conference or Zoom video conference. There will be a limit of ten Citation examinations permitted per half-hour slot (because third-party Citations do not involve a court appearance in the first instance, those Citations do not count towards that limit).

The following procedures will apply under this Standing Order:

- a. Along with the citation summons, **the judgment creditor must serve a “Notice of Remotely Conducted Proceedings” and “Remote Court Instructions for Participants”** on the judgment debtor, using the approved forms attached as Appendix A and E, respectively.
- b. The plaintiff’s Notice of Remotely Conducted Proceedings must communicate the following information to the defendant and any other respondent:
 - (i) The citation examination **will not be conducted in person in Courtroom 1401 in the Daley Center on the date and time stated in the summons.** Instead, the matter will be handled remotely, through either a telephonic conference call or a Zoom video conference. **The defendant or other respondent must not physically appear in Courtroom 1401 in the Daley Center on the date and time noted in the summons.**
 - (ii) Rather, on the “Return Date” noted in the citation, summons, or notice the judgment debtor must appear by Zoom (either by computer or telephone), using the instructions set out in the “Remote Court Instructions for Participants” Attached as Appendix E.
 - (iii) Citation Examinations in even-numbered cases will be heard daily by Zoom at 9:00 a.m. and in odd-numbered cases at 9:30 a.m. regardless of the time shown on the summons or notice served.
 - (iv) If the judgment debtor or other respondent fails to appear during the remotely conducted conference hearing, an order may be entered

against the judgment debtor or other respondent that adversely affects their interest.

- c. If a judgment debtor does not appear in the manner outlined in Section IV (1)(b), above, and the judgment creditor seeks the entry of an order of relief in its favor, the judgment creditor must submit to the Court by email at Room1401Hearings@gmail.com proof of service of the citation (and such other materials as may be necessary to grant the relief sought) as well as a certification (in the form attached as Appendix D) detailing its compliance with this Standing Order in a single .pdf file along with their proposed order in a separate, stand-alone .pdf file, before any such relief will be considered.

2. Third-Party Citations and Garnishment (Wage and Non-Wage) Proceedings

Third-Party Citations and Garnishments (Wage and Non-Wage) will not be heard absent a request for a hearing made by the judgment debtor. **The Return Date issued by the Clerk of the Court on a third-party Citation is an answer date only.**

The following procedures will apply under this Standing Order:

- a. Along with the citation summons or garnishment summons or corresponding notice, **the judgment creditor must serve** a “Notice of Remotely Conducted Proceedings” on (a) the judgment debtor and (b) any other respondent to the citation or garnishment summons, using the approved form attached as Appendix B - 1.
- b. The plaintiff’s Notice of Remotely Conducted Proceedings must communicate the following information to the defendant and any other respondent:
 - (i) The citation or garnishment proceeding **will not be conducted in person in Courtroom 1401 in the Daley Center on the date and time stated in the summons.**
 - (ii) Instead, if a defendant/judgment debtor or other respondent wishes to have a court hearing on the citation or garnishment, they must make a request for a hearing on or before the later of (a) the scheduled Return date in the summons or notice (or any continued court date whether due to the lack of an answer or other good cause) and (b) seven business days after the date of the notice required to be provided under section II (2)(a).

(iii) When requesting a hearing, the defendant/judgment debtor or other respondent is directed to contact both the plaintiff and the Court by email or through phone as follows:

- **Plaintiff/Judgment Creditor:** At the email address or phone number stated in the summons or other Notice
- **Court:** Email address: Room1401Hearings@gmail.com or phone number: (312) 603-4372 (Courtroom 1401 Clerk)

(iv) The defendant/judgment creditor must communicate the following information to the plaintiff/judgment creditor and to the Court:

- The case name and number
- The Return Date listed on the summons or other Notice
- The defendant/judgment debtor's or other respondent's name
- Any email address where the defendant/judgment debtor or other respondent may be reached
- A phone numbers where the defendant/judgment debtor or other respondent may be reached
- Any need for a translator to be present for the hearing (specifying the native language of the defendant/judgment debtor).

(v) Once the defendant/judgment debtor or other respondent contacts the plaintiff/judgment creditor and the Court and supplies the above information, the Court, in turn, will provide the parties with a date and time for either a telephonic conference call or a video conference.

(vi) The matter will be handled remotely during the telephonic or Zoom video conference hearing.

(vii) If the defendant/judgment debtor or other respondent fails to appear during the remotely conducted hearing they requested, an order may be entered against the defendant or other respondent that adversely affects their interest.

c. If a defendant/judgment debtor or other respondent does not contact the plaintiff and the Court in the manner outlined in Section IV (2)(b), above, and the plaintiff/judgment creditor seeks the entry of an order of relief in its favor, the plaintiff must submit to the Court by email at Room1401Hearings@gmail.com proof of service of the citation or

garnishment (and such other materials as may be necessary to grant the relief sought) and a certification detailing its compliance with this Standing Order in the form attached as Appendix D, in a single .pdf file along with their proposed order in a separate, stand-alone .pdf file, before any such relief will be considered.

- d. If the Court concludes that the relief requested is adequately supported and appropriate, (a) the Court will sign the Order, (b) the Clerk will enter the Order, and (c) the Court will transmit a copy of the signed and entered Order by email to all counsel and parties at the email addresses provided by the moving party.
- e. Nothing in this Standing Order or the procedures set out for requesting a hearing precludes a defendant/judgment debtor from filing a motion to invoke an exemption or for other relief. See section I.3., above, for the process for seeking a hearing on an emergency motion.

3. Replevin and Detinue Cases

Replevin and Detinue case were formerly handled in person on Monday and Tuesday at 2:00 p.m. in Courtroom 1401 in the Daley Center. During the period when this Standing Order is in force, all proceedings in Replevin and Detinue matters **will not be conducted in person** but instead will be conducted remotely via either telephonic conference or Zoom video conference.

The following procedures will apply under this Standing Order:

- a. Along with the summons or any notice of motion, **the plaintiff or movant must serve** a “Notice of Remotely Conducted Proceedings” and “Remote Court Instructions for Participants” on all parties using the approved forms attached as Appendix C and E, respectively.
- b. The plaintiff’s Notice of Remotely Conducted Proceedings must communicate the following information to all parties:
 - (i) The proceedings **will not be conducted in person in Courtroom 1401 in the Daley Center on the date and time stated in the summons.** Instead, the matter will be handled remotely, through either a telephonic conference call or a Zoom video conference. **The defendant or other respondent must not physically appear in Courtroom 1401 in the Daley Center on the date and time noted in the summons.**

- (ii) Rather, on the “Return Date” noted in the summons or notice of motion the parties must appear by Zoom (either by computer or telephone), using the instructions set out in the “Remote Court Instructions for Participants.”
 - (iii) Replevin and Detinue matters in even-numbered cases will be heard daily by Zoom at 1:30 p.m. and in odd-numbered cases at 2:00 p.m. regardless of the time shown on the summons or notice served.
 - (iv) If the defendant or respondent fails to appear during the remotely conducted conference hearing, an order may be entered against the defendant that adversely affects their interest.
- c. If a defendant or respondent does not appear in the manner outlined in Section IV (3)(b), above, and the plaintiff or movant seeks the entry of an order of relief in its favor, the plaintiff or movant must submit to the Court by email at Room1401Hearings@gmail.com proof of service (and such other materials as may be necessary to grant the relief sought) as well as the certification detailing its compliance this Standing Order in the form attached as Appendix D, in a single .pdf file along with their proposed order in a separate, stand-alone .pdf file, before any such relief will be considered.

III. Court Calendar

The daily Court Call schedule for Room 1401 is attached as Appendix F.

IV. Orders, Supporting Materials, and File-Naming Convention

All proposed Orders shall be submitted in a single, stand-alone .pdf file titled beginning with the case number (e.g., 20 M1 xxxxxx Order) followed by any other identifying information relevant to the party submitting the proposed Order.

All materials supporting entry of any proposed Order shall contained in a single .pdf file and titled beginning with the case number (e.g., 20 M1 xxxxxx Docs) followed by any other identifying information relevant to the party submitting the proposed Order.

DATED: February __, 2021

Entered:

E. Kenneth Wright, Jr.
Presiding Judge
First Municipal District

**CIRCUIT COURT OF COOK COUNTY, ILLINOIS
FIRST MUNICIPAL DISTRICT, CIVIL DIVISION
POST-JUDGMENT and MISCELLANEOUS REMEDIES SECTION, ROOM 1401**

STANDING ORDER

Considering the current world pandemic caused by the COVID-19 virus, the Court recognizes the continuing need to create as safe of an environment as possible for parties and counsel to conduct their business before the Court. The terms of this Order are designed to (a) allow litigants to advance their cases without having to physically appear in court to conduct some of that business, (b) facilitate the conduct of contested hearings remotely, and (c) continue to provide court access, information, and court services to all parties, particularly pro se litigants.

Notwithstanding anything in this Standing Order to the contrary, any pro se litigant may, if they so choose, appear in-person in Room 1401 at any otherwise telephonic or Zoom hearing scheduled by the Court (while the other participants may appear remotely).

The Effective Date of this Order is February __, 2021, and the Order will remain in place until further Order of the Court. This Order supersedes the Standing Order of June 24, 2020.

The following constitutes the Standing Order for the Post Judgment & Miscellaneous Remedies Section of the First Municipal Division.

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I. MOTIONS and PROPOSED ORDERS

1. These matters are “Routine Matters” that will be handled by an in Chambers review of proposed Orders submitted to Room1401Hearings@gmail.com, without the need for a motion. The party submitting the proposed Order shall copy all parties on the email or, if any parties’ email address is not known, the submitting party shall send a copy of the proposed Order to such other party by regular U.S. mail. All proposed Agreed Orders must contain the signature of each party or its counsel to reflect that party’s agreement to the entry of the Order. Electronic signatures and side letters or emails will suffice.
 - Agreed scheduling or dismissal Orders
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 - Judgment creditor’s dismissal of a rule to show cause
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2. . The protocol for the presentation of any Motion is as follows:

- a.** The moving party must e-file and serve the motion in the usual and customary manner prescribed by statute and court rules.
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(i) If a request for hearing is made, the Court will set the date and time for the hearing and advise the parties. The movant shall be responsible for submitting an Order reflecting the date and time the Court set for the hearing.

(ii) If no hearing request has been made by the date specified in the Notice of Motion the moving party must then email a copy of the motion and supporting materials, which must include the Certification in the form attached as Appendix D (together in a single pdf file) and the proposed order (in a separate, stand-alone pdf file) to the Court at Room1401Hearings@gmail.com. The subject line of the email must include the title of the motion and case number. If Court concludes that the relief requested is adequately supported and appropriate, (a) the Court will sign the Order, (b) the Clerk will enter the Order, and (c) the Court will transmit a copy of the signed and entered Order by email to all counsel and parties at the email addresses provided by the moving party.

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- a. Along with the citation summons, **the judgment creditor must serve a** “Notice of Remotely Conducted Proceedings” and “Remote Court Instructions for Participants” on the judgment debtor, using the approved forms attached as Appendix A and E, respectively.
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against the judgment debtor or other respondent that adversely affects their interest.

- c. If a judgment debtor does not appear in the manner outlined in Section IV (1)(b), above, and the judgment creditor seeks the entry of an order of relief in its favor, the judgment creditor must submit to the Court by email at Room1401Hearings@gmail.com proof of service of the citation (and such other materials as may be necessary to grant the relief sought) as well as a certification (in the form attached as Appendix D) detailing its compliance with this Standing Order in a single .pdf file along with their proposed order in a separate, stand-alone .pdf file, before any such relief will be considered.

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 - (ii) Instead, if a defendant/judgment debtor or other respondent wishes to have a court hearing on the citation or garnishment, they must make a request for a hearing on or before the later of (a) the scheduled Return date in the summons or notice (or any continued court date whether due to the lack of an answer or other good cause) and (b) seven business days after the date of the notice required to be provided under section II (2)(a).

(iii) When requesting a hearing, the defendant/judgment debtor or other respondent is directed to contact both the plaintiff and the Court by email or through phone as follows:

- **Plaintiff/Judgment Creditor:** At the email address or phone number stated in the summons or other Notice
- **Court:** Email address: Room1401Hearings@gmail.com or phone number: (312) 603-4372 (Courtroom 1401 Clerk)

(iv) The defendant/judgment creditor must communicate the following information to the plaintiff/judgment creditor and to the Court:

- The case name and number
- The Return Date listed on the summons or other Notice
- The defendant/judgment debtor's or other respondent's name
- Any email address where the defendant/judgment debtor or other respondent may be reached
- A phone numbers where the defendant/judgment debtor or other respondent may be reached
- Any need for a translator to be present for the hearing (specifying the native language of the defendant/judgment debtor).

(v) Once the defendant/judgment debtor or other respondent contacts the plaintiff/judgment creditor and the Court and supplies the above information, the Court, in turn, will provide the parties with a date and time for either a telephonic conference call or a video conference.

(vi) The matter will be handled remotely during the telephonic or Zoom video conference hearing.

(vii) If the defendant/judgment debtor or other respondent fails to appear during the remotely conducted hearing they requested, an order may be entered against the defendant or other respondent that adversely affects their interest.

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- d. If the Court concludes that the relief requested is adequately supported and appropriate, (a) the Court will sign the Order, (b) the Clerk will enter the Order, and (c) the Court will transmit a copy of the signed and entered Order by email to all counsel and parties at the email addresses provided by the moving party.
- e. Nothing in this Standing Order or the procedures set out for requesting a hearing precludes a defendant/judgment debtor from filing a motion to invoke an exemption or for other relief. See section I.3., above, for the process for seeking a hearing on an emergency motion.

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The following procedures will apply under this Standing Order:

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- b. The plaintiff’s Notice of Remotely Conducted Proceedings must communicate the following information to all parties:
 - (i) The proceedings **will not be conducted in person in Courtroom 1401 in the Daley Center on the date and time stated in the summons.** Instead, the matter will be handled remotely, through either a telephonic conference call or a Zoom video conference. **The defendant or other respondent must not physically appear in Courtroom 1401 in the Daley Center on the date and time noted in the summons.**

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 - (iv) If the defendant or respondent fails to appear during the remotely conducted conference hearing, an order may be entered against the defendant that adversely affects their interest.
- c. If a defendant or respondent does not appear in the manner outlined in Section IV (3)(b), above, and the plaintiff or movant seeks the entry of an order of relief in its favor, the plaintiff or movant must submit to the Court by email at Room1401Hearings@gmail.com proof of service (and such other materials as may be necessary to grant the relief sought) as well as the certification detailing its compliance this Standing Order in the form attached as Appendix D, in a single .pdf file along with their proposed order in a separate, stand-alone .pdf file, before any such relief will be considered.

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All materials supporting entry of any proposed Order shall contained in a single .pdf file and titled beginning with the case number (e.g., 20 M1 xxxxxx Docs) followed by any other identifying information relevant to the party submitting the proposed Order.

DATED: February __, 2021

Entered:

DRAFT

E. Kenneth Wright, Jr.
Presiding Judge
First Municipal District

UPCOMING EVENTS

NSBA GARY WILD EVENT

March 31, 2021



Every year the NSBA honors Past President Gary Wild. The NSBA gives a monetary award to an organization that exemplifies Gary's character and interests.

Additionally Gary, as a lawyer, was zealous in protecting the rights of the less fortunate. He was a social security disability lawyer, represented parents and children in the juvenile court, and was an active member of the ACLU. Judge Allen Goldberg, one of Gary's friends at the NSBA, presents the NSBA donation at the yearly dinner. Then a representative of the honored group speaks about the organization.

ILCBA ANNUAL MEETING

April 22, 2021



The ILCBA Annual Meeting will be a virtual gathering this year. We will take the opportunity to thank retiring board members and welcome new ones.

Please join us to thank Michael Polk and David Axelrod for their years of service to the ILCBA community.

We will host a separate event in the fall to honor our recipients of the Judge Alexander P White award. Our goal is to host an in-person event to celebrate.

THANK YOU

MCLE CERTIFICATES

Please complete your survey in order to receive your MCLE certificate. Survey Link:

<https://forms.gle/CUHn2oro8CEJNQ7cA>

ILCBA MEMBERSHIP

The ILCBA offers individual memberships and firm memberships with cost savings for groups of 6 or more. New members are welcome to join at a discounted rate for attending the seminar. Please contact Tricia at the ILCBA office for more information.

NSBA MEMBERSHIP

The NSBA offers memberships for individual lawyers, government employees, retirees and students. New members are extended a discounted rate for attending the seminar. Please contact Tricia at the NSBA office for assistance.

CONTACT INFORMATION

ILCBA CONTACT INFORMATION

Association Manager: Tricia Fusilero

Email: ILCBA@corpevent.com

Phone: 888-684-4222

Fax: 312-540-9900

website: www.ILCBA.org

NSBA CONTACT INFORMATION

Association Manager: Tricia Fusilero

Email: Northsuburbanbar@gmail.com

Phone: 847-759-8700

Fax: 312-540-9900

website: www.ILNSBA.org