

COVID-19 COMPANION GUIDE TO THE ILLINOIS CIVIL PRACTICE GUIDE

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INTRODUCTION

The COVID-19 pandemic has had an enormous impact on civil litigation in Illinois. Since March 2020, the Governor of Illinois and Illinois courts of all levels have implemented numerous orders that affect nearly all facets of civil litigation. As the demands of the pandemic have changed, these orders have, in many instances, been revised or superseded by new orders. As a result, Illinois civil litigation is presently governed by a complex patchwork of orders and rules that continue to change on a regular basis.

It is important for all Illinois practitioners both to familiarize themselves with these orders and rules and to stay abreast of updates to the orders and rules. Accordingly, as a supplement to the 2021 edition of the Illinois Civil Practice Guide, we are including this “COVID-19 Companion Guide” that highlights some of the most significant changes to Illinois civil practice that have been implemented in response to the COVID-19 pandemic.

Given the many orders governing different courts around the State, and the evolving nature of these orders, the COVID-19 Update is not intended to be all encompassing. All attorneys should independently review and familiarize themselves with all relevant orders and rules and monitor updates to those orders and rules. Nevertheless, we hope that you find the COVID-19 Update to be a helpful tool in navigating Illinois civil litigation during the pandemic. This Guide was last updated in April 2021, and the authors hope to update it periodically as the situation develops.

I. Relevant COVID-19 Orders Impacting Civil Litigation

Staying on top of the many updates and revisions to COVID-19 orders and rules from the government and courts can be a challenge for all practitioners. Below are links to several websites that provide important information on COVID-19 orders and rule changes that impact civil litigation.

Orders from the Illinois Governor. In March 2020, Illinois Governor J.B. Pritzker issued a Disaster Proclamation pursuant to the Illinois Emergency Management Agency Act, 20 ILCS § 3305. Since that time, the Governor has issued several other similar disaster proclamations, including a February 5, 2021 proclamation in effect until March 7, 2021. The Governor has also issued a series of Executive Orders, several of which impact litigation practice. These disaster proclamations and executive orders can be found on the [State of Illinois COVID-19 Response webpage](#).

Illinois Supreme Court Orders. The Illinois Supreme Court has compiled a thorough collection of resources on its [COVID-19 Information and Updates webpage](#). This page includes links to the Supreme Court’s COVID-19 orders, COVID-19 Task Force initiatives, various court administration guidelines, court reestablishment plans, and recent updates to COVID-19 orders from Illinois courts.

Illinois Appellate Court Orders. The Illinois Appellate courts have issued several orders and press releases amending their court rules. The Illinois State Bar Association has collected the courts' notices on their [COVID-19 Judicial & Administrative Information page](#).

Circuit Court of Cook County Orders. The Cook County Circuit Court's General Administrative Orders and Operating Procedures can be viewed on the [Circuit Court's website](#). This site also includes COVID-19 orders of the various divisions of the Circuit Court, including the Chancery Division, the Law Division, and the municipal districts.

Other Circuit Court Orders. Links to orders issued by other circuit courts can be found on the Illinois Supreme Court's [COVID-19 Information and Updates webpage](#) or the Illinois State Bar Association's [COVID-19 Judicial & Administrative Information page](#).

II. Initiating a Lawsuit

As a general matter, Illinois has not extended or tolled statutes of limitation because of the pandemic. Litigants should therefore exercise care to comply with the ordinary statutes of limitations despite challenges that may be caused by the pandemic, absent an order extending the statute of limitations for a particular type of claim. The Illinois Court of Claims has, however, amended its statute of limitations to toll the statute of limitations and notice provisions during the pendency of the Governor's disaster proclamation and for 30 days thereafter. See 74 Ill. Adm. Code § 790.40(d) (2020).

COVID-19 has led to changes in the rules governing services of process, and in particular, service of process in actions governed by Illinois Supreme Court Rule 101(b) (e.g., actions "for money not in excess of \$50,000). On August 14, 2020, the Illinois Supreme Court amended the approved Rule 101(b) form by eliminating the requirement that the summons be served no later than 30 days from the date of issuance. [Ill. S. Ct., M.R. 3140, at 2 \(eff. Aug. 14, 2020\)](#); see Ill. S. Ct. R. App. 101. Then, on August 27, 2020, the Illinois Supreme Court entered an administrative order limiting return date summons to actions for eviction, replevin, or detinue. [Ill. S. Ct., M.R. 30370 § 2\(a\) \(eff. Sept. 23, 2020\)](#). The order stated that, in all civil cases (except for small claims or family proceedings), practitioners must "use a summons, under Illinois Supreme Court Rule 101(d), requiring each defendant to answer or otherwise file an appearance within 30 days after service." *Id.* § 2(c).

On February 10, 2021, however, the Illinois Supreme Court entered an order stating that the August 27, 2020 amendments regarding summonses would be vacated, effective in 60 days (April 11, 2021). [Ill. S. Ct., M.R. 30370 §§ 2, 4 \(eff. Feb. 10, 2021\)](#). Under this February order, return date summons will be permissible again in qualifying actions under Rule 101(b) and, under Illinois Supreme Court Rule 101(b)(1), will be required to specify an appearance date between 40 and 61 after issuance of the summons—an increase from the 21 to 40 days previously required. *Id.* § 2(a). All Rule 101(b)(1) return date summons must also be served at least 21 days before the day of appearance. *Id.* § 2(b). These rules are effective April 11, 2021. *Id.* § 4. In addition,

effective immediately, all summons must include specific language explaining that defendants may appear by phone or video conference. *Id.* § 3(b).

Attorneys should be careful to review applicable rules of the circuit court or divisions thereof in which they are filing or defending suit. For example, Illinois law ordinarily requires process in Cook County to be served by the county sheriff absent the court's appointment, on motion, of a special process server. See 735 ILCS § 5/2-202. But, due to the COVID-19 outbreak, the Office of the Sheriff of Cook County began prioritizing service in "essential" cases, yielding delays in "non-essential" cases. In response, on March 25, 2020, the Law Division Motion Section established temporary procedures for presenting motions for appointment of special servers, allowing such motions to be heard by Emergency Motion Judges. See [Law Division Motion Section Notice on Temporary Procedures for Service of Process \(Mar. 25, 2020\)](#).

III. Case Management Hearings

Early on in the COVID-19 pandemic, many circuit courts and subdivisions thereof entered orders that automatically continued case management conferences and status hearings. As time has passed, some courts have allowed such hearings to resume—largely remotely—while others have left their automatic continuances in place. Practitioners should closely monitor orders of the circuit court and subdivisions thereof in which their case is pending.

For example, the Chief Judge of the Circuit Court of Cook County has issued several General Administrative Orders impacting case management conferences (CMCs). The currently operative order, General Administrative Order 2020-07 (Mar. 23, 2021), states that all matters in the Districts and Divisions of the Circuit Court shall be conducted by video conference, except in "extraordinary or compelling circumstances." [Cook County Cir. Ct. G.A.O. 2020-07, at 1 \(eff. Mar. 23, 2021\)](#). If a judge orders an in-person meeting, all participants must wear face masks and follow social distancing guidelines while at the courthouse. *Id.* This order also grants the Presiding Judge of each District or Division the authority to "establish procedures for rescheduling cases by administrative order, as long as such procedures are consistent with this order." *Id.* § 1.a.ii.

Pursuant to this Order, the Law Division of the Circuit Court of Cook County has, for the most part, struck all CMCs. On December 17, 2020, the Presiding Judge of the Law Division struck all in-person CMCs and status court dates. [Cook County Law Division G.A.O. 20-9 § 1.5 \(eff. Dec. 17, 2020\)](#). The order also established a new procedure for case management conferences. See *id.* § 3.11. Instead of holding in-person conferences for case management, the parties must meet and confer on their own and prepare a CMC order that establishes the deadlines for discovery. *Id.* § 3.11(E)(1); *id.* § 3.11(F)(1). The Law Division has created form CMC orders, available on its website, to facilitate this process. See [Active Case Management Order, Cook County Court](#). The parties then submit their agreed-upon CMC order to the assigned judge no later than 14 days after all parties have appeared and no later than 6 months after the case was filed. Cook County Law Division G.A.O. 20-9 § 3.11(E)(2) (eff. Dec.

17, 2020). Failure to submit a CMC order will result in the case being administratively dismissed. *Id.* § 3.11(E)(14). Once submitted, the assigned judge reviews the proposed CMC order and either enters it or will email counsel to resolve all CMC issues. *Id.* §§ 3.11(E)(3)-(4). Remote CMC conferences will not be conducted unless the judge determines it necessary. *Id.* § 1.7 (describing remote proceedings); *id.* § 3.11(E)(6) (providing for the judge’s discretion). A party can request such a conference by emailing the assigned motion judge. *Id.* at § 3.11(E)(7).

Due to ongoing COVID-19 precautions, practitioners should monitor the [Law Division’s page on the Cook County Circuit Court](#) website for new notices impacting CMC dates. For example, the Law Division recently posted a notice stating that “cases set for CMC/trial certification from 1-4-21 through 2-28-21 will be rescheduled for 120 days from the currently set dates,” with new dates to be provided via electronic notice. See [Notice: Case Management CMC/Trial Certification Court Dates, Cook County Law Division](#).

The Chancery Division is also implementing rules to reduce the number of in-person status hearings. See [Cook County Chancery Division G.A.O. No. 2021-05 § 1 \(eff. Mar. 25, 2021\)](#). Instead of holding status hearings in-person, the Chancery Division has instructed litigants to submit written status reports periodically as their case progresses. See *id.* § IV.B.1.e. In each case, the court sets a deadline for the parties to submit written status reports. *Id.* After receiving the reports, the court issues a written ordering providing a status date by which the parties must provide an update on the case. *Id.* If the court determines that further argument is necessary, or that a conference needs to be held, then the court will set a time for a teleconference, videoconference, or an in-person proceeding. *Id.*

Finally, practitioners should be aware of the May 22, 2020 amendments to the Illinois Supreme Court Rules. These amendments made three changes. First, the Illinois Supreme Court created Rule 45, which states that “case participant[s]” may make court appearances remotely, whether by telephone or by video conference. Ill. S. Ct. R. 45. “[C]ase participant[s]” include not only the attorneys and litigants, but also the judge, witnesses, experts, interpreters, treatment providers, law enforcement officers, court reporters, and others. Committee Comments to Ill. S. Ct. R. 45 (rev. May 22, 2020). Rule 45 has no hardship requirement and the Committee Commentary encourages courts to apply Rule 45 liberally. *Id.*

Second, the Illinois Supreme Court amended Rule 46 to state that the record of court proceedings can be created using video conferencing recording services, if the software is approved by the Illinois Supreme Court. Ill. S. Ct. R. 46. While many video conferencing software offer a recording function or a transcription function, litigants should be mindful that unless the Supreme Court approves of recording with such software, the official record of court proceedings must be taken pursuant to the standard record rules. See *id.*

Third, the Illinois Supreme Court amended Rule 241 to allow case participants to participate or testify remotely during “civil trial[s] and evidentiary hearing[s].” Ill. S. Ct. R. 241. Rule 241 is discussed in more detail in Section VI of this Companion Guide.

IV. Discovery

a. Discovery Generally

Circuit courts have entered different orders governing discovery in light of the COVID-19 pandemic. Generally speaking, discovery during the COVID-19 pandemic is proceeding uninterrupted. For example, the Circuit Court of Cook County has ordered that all discovery will continue as scheduled, except for oral depositions, which may continue unless it is “not reasonably possible to conduct an oral deposition for reasons related to the COVID-19 emergency.” Cook County Cir. Ct. G.A.O. 2020-07, § 1.h (eff. Mar. 23, 2021).

Litigants can continue to use the standard tools for enforcing discovery compliance. Parties may bring motions to compel, motions to extend deadlines, or motions for protective orders, so long as they first confer with the opposing party. See Ill. S. Ct. R. 201(k) (conference requirement). The Cook County Circuit Court, however, has been more flexible with discovery deadlines. See Cook County Cir. Ct. G.A.O. 2020-07, § 1.h. (eff. Mar. 23, 2021). Under the controlling General Administrative Order, if a party’s compliance with the discovery rules is delayed for a reason related to the COVID-19 pandemic, then the participants will not be penalized unless good cause is shown. See *id.* § 1.h.iii.

b. Depositions

On June 4, 2020, the Illinois Supreme Court issued a temporary amendment to Rule 206 to foster the taking of remote depositions. See [Ill. S. Ct., M.R. 30370 § \(h\) \(eff. June 4, 2020\)](#). First, the deponent does not need to be in the presence of an officer administering the oath and recording the deposition. *Id.* § (h)(1). Second, if deposition participants are able to view exhibits in real time during the remote deposition, then exhibits or demonstrative evidence used in the deposition need not be provided to other parties in advance. *Id.* § (h)(2). Third, any time spent addressing necessary technology issues will not count against the deposition’s time limit under either Rule 206(d), stipulations, or any court orders. *Id.* § (h)(5). Fourth, although many video conferencing systems have their own recording features, the temporary rule prohibits recording remote depositions unless the recording method was the method disclosed in the notice of deposition. *Id.* § (h)(6). Finally, if the parties cannot agree on a remote method, “the circumstances of a remote deposition are within the discretion of the trial court.” *Id.* at Committee Comments to Ill. S. Ct. R. 206 (rev. June 4, 2020).

The committee comments to the temporary amendment also counsel that attorneys should be mindful of ethical concerns when conducting remote depositions. *Id.* at Committee Comments to Ill. S. Ct. R. 206 (rev. April 29, 2020). In light of Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to

Opposing Party and Counsel), and 8.4(d) (Misconduct), attorneys representing deponents should instruct deponents that the deponent may not communicate with anyone during the examination other than the examining attorney or the court reporter, and may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. *See id.* To help safeguard these concerns, the amendment allows a party to examine the deponent regarding the identity of all persons in the room during testimony. *See id.* These temporary amendments do not, however, prohibit the witness's attorney from being present in the room during the deposition.

The circuit courts, too, have issued orders addressing depositions in light of COVID-19. As discussed above, Circuit Court G.A.O. 2020-07 allows oral depositions to continue unless it is "not reasonably possible to conduct an oral deposition for reasons related to the COVID-19 emergency." Cook County Cir. Ct. G.A.O. 2020-07, § 1.h.ii. (eff. Mar. 23, 2021). If that is the case, the parties shall use their best efforts to come to an agreement on postponing the deposition for up to 60 days. *Id.* If no agreement is reached, the proceedings are deferred until a court directs a new date. *Id.*

V. Motion Practice

The Illinois Supreme Court Rules have been amended in a way that fosters remote argument of motions. Generally speaking, under new Rule 45, motions can be argued remotely. *See* Ill. S. Ct. R. 45. When courts conduct "civil trial[s] or evidentiary hearing[s]," however, Rule 241 applies. Ill. S. Ct. R. 241. Under Rule 241, case participants—defined consistent with Rule 45—may participate remotely only if (1) good cause and appropriate safeguards are shown, and (2) the participant uses video conferencing from a remote location. *Id.* An agreement of the parties will establish good cause. *See* Committee Comments to Ill. S. Ct. R. 241 (rev. May 22, 2020). If video conferencing is not available however, the court may only allow for telephone conferencing "in compelling circumstances with good cause shown and upon appropriate safeguards." Ill. S. Ct. R. 241.

Illinois circuit courts, too, have amended their rules relating to motions. For example, the Law Division of the Cook County Circuit Court has ordered that all future motions must be filed electronically using the "DO NOT SCHEDULE" option and emailed to the assigned judge, copying all parties of record. Cook County Law Division G.A.O. 20-9 § 1.8 (eff. Dec. 17, 2020). The Law Division also established new procedures for the Motions Section, ranging from notice and e-filing requirements to procedures for contesting motions. *Id.* §§ 3.1-4.8. The Chancery Division has similarly drafted new rules for emergency motions that, among other things, create a triage policy for handling motions. Cook County Chancery Division G.A.O. No. 2021-05 § IV.B. (eff. Mar. 25, 2021).

For motions (or other filings) with declarations or affidavits in support, parties can make use of the state's new remote notarization protocols. Early in the pandemic, Governor Pritzker issued Executive Order 2020-14, which eased the requirements of the Illinois Notary Act. [Exec. Order No. 2020-14, 44 Ill. Reg. 5961 \(April 10, 2020\)](#). Under Executive Order 2020-14, notaries and signatories are not required to physically meet to perform a notarization if four criteria are met:

- the notary performs a remote notarization via two-way audio-video communication technology which allows for direct, contemporaneous interaction between the signatory and the notary “by sight and sound”;
- the notary is commissioned in Illinois;
- both the notary and the signatory are physically located in the State while performing the notarial act and attest to such during the communication; and
- the transaction follows any guidance issued by the Illinois Secretary of State on the Secretary's website.

Id. at 5962-63. The Executive Order also imposes duties on signatories and notaries who use remote notarizations. During the two-way communication, the signatory must:

- affirmatively state what document they are signing;
- initial each page of the document in the presence of the notary;
- show the notary each page of the document being witnessed in a way that it is “clearly legible to the [notary]”; and
- ensure that the act of signing is captured “sufficiently up close on the two-way audio-video communication for the [notary] to observe.”

Id. Once signed, the signatory “must transmit by fax or electronic means a legible copy of the entire signed document directly to the witness no later than one day after signing.” *Id.* at 5963. In response, the notary must sign the transmitted copy and send the signed copy back via fax or electronic means within 24 hours of receipt. *Id.* Furthermore, the signatory is required to record the audio-video communication and retain the recording for no less than three years. *Id.* at 5962.

VI. Trials

The Illinois Supreme Court has granted the Chief Judges of the circuit courts discretion on handling trials. See [Ill. S. Ct., M.R. 30370, at 1 \(eff. Apr. 3, 2020\)](#). During the height of the pandemic, most circuit courts continued all trials by general order. See Cook County Cir. Ct. G.A.O. 2020-07, § 1.a.v. (eff. Nov. 23, 2020). However, on March 23, 2021, the Cook County Circuit Court announced that jury trials could resume in all Departments and Divisions starting May 3, 2021. Cook County Cir. Ct. G.A.O. 2020-07, § 1.a.iv. (eff. Mar. 23, 2021). In each case, the presiding judge has discretion to decide whether the trial will proceed in person, over videoconference, or through some combination of the two. *Id.*; § 1.a.iv.3. Following this guidance, the Law Division will begin the jury trial setting process on or after May 3, 2021. [Cook County Law Division G.A.O. 21-1, 1 \(eff. Apr. 1, 2021\)](#). Subject to the discretion of the Presiding Judge of the Law Division and public health guidelines, the Law Division will start with cases

originally set for trial on March 17, 2020, and then schedule cases chronologically by their original trial date. *Id.* The Chancery Division has not announced any changes in trial practice following the Circuit Court's March 23, 2021 order. Under the Chancery Division's current order, the Division permits bench trials by videoconference at the discretion of the presiding judge. Cook County Chancery Division G.A.O. No. 2021-05 § IV.B.1.g. (eff. Mar. 25, 2021). If a trial or hearing needs to be held in person, the court must either employ all necessary safeguards or continue the proceeding to protect public health and safety. *Id.*

The Illinois Supreme Court has advised courts to resume civil jury trials where possible and drafted guidelines on how to utilize a remote jury. [Ill. S. Ct., M.R. 30370, at 1-2 \(eff. Oct. 27, 2020\)](#). Those guidelines can be viewed on the [Illinois Courts website](#). The Supreme Court's order imposes several rules regarding remote jury selection, which requires either the consent of all parties or a judge's finding of compelling circumstances after weighing the factors of public safety and access to justice. Ill. S. Ct., M.R. 30370, at 2 (eff. Oct. 27, 2020). However, if a circuit court undertakes a remote jury selection pilot program with the Illinois Supreme Court's approval, then the circuit court may mandate remote jury selection in all cases. *Id.*

The recent amendments to the Illinois Supreme Court Rules make an entirely remote trial possible. Rule 241 allows for case participants to participate in trial via video conference only if (1) good cause and appropriate safeguards are shown, and (2) the participant uses video conferencing from a remote location. Ill. S. Ct. R. 241. If video conference services are unavailable, the court may receive testimony by telephone only upon a heightened showing. *Id.* Rule 46 allows for courts to generate the official court record using video conferencing services, but only if the software approved by the Supreme Court. Ill. S. Ct. R. 46.

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