SOME DOCKET ENTRY ABBREVIATIONS USED IN THE 4TH CIRCUIT

adj, adj'y adj hrg	adjudicatory, adjudicatory hearing
app	appeal
apptd	appointed
arrmt,arr	arraignment
ass'mt	assessment
atty	attorney
ASA	assistant state's attorney
AG, AAG	assistant atty general
BA, B/A	by agreement
BA	body attachment
BT	bench trial
BTA	bond to apply
BW B-W	bench warrant bond-warrant
c	costs
CA	city attorney
cc	conference call
cc	court costs, counterclaim
CD	conditional discharge
ch spt, cs	child support
CJ	county jail, as ECJ for Eff Co Jail
CMC	case management conference
CPR	charges, penalties, rights
CTN	clerk to notify
cs	child support
cs	court service, as cs fee
cs or csw	community service (work)
ct	court
CTDA CDA	citation to discover assets
D, Dft, Def, Δ	defendant
dispo hrg	dispositional hearing
DJ	default judgment
DOC	Department of Corrections
DP	defendant present
DWLR	driving while lic revoked
DWLR	dismissed with leave to reinstate
DWLS	driving while lic suspended
DWP	dismissed for want of prosecution
DWOP	dismissed without prejudice
EIP	Early Intervention Program
EMHC	electronic monitoring home confinement
EOP	emergency order of protctn
XP OP	ex parte order of protection
f	fine

FA	financial affidavit
FAWA	first appearance with atty
FAWC	first appearance w counsel
fd	found (as in fd NG)
FTA	fails to appear
FTP	fails to pay
GAL	guardian ad litem
gty	guilty
hg, hrg	hearing
J	judgment
JCon	judgment of conviction
Jdef	judgment deferred
J & S	joint and several
JDP	judicial driving permit
JT	jury trial
M	motion
MSA	marital settlement agreement
MSD	motion of state to dismiss
MSN	motion of state to nolle
N	notice
NAIC	no appearance if current
NFS	no further settings
NG	not guilty
NNAIC	need not appear if current
NOS	no other settings
NP	negotiated plea
NTA	notice to appear
OP	order of protection
OTBP	order to be prepared
OTC	over the counter
OTSC	order to show cause
OWH	order of withholding
pb, prob	probation
pc, prob c	probable cause
PD	public defender
PF	probation fee
PO	police officer
POA	pay or appear
POG	plea of guilty
PONG	plea of not guilty
POP	plenary order of protectn
PP	petitioner or TT present
prelim prel hg p hg, PH	preliminary hearing
pro se	(without an attorney)
PSF	probation service fee
PSI, PSR	pre-stc investigatn/report
P, Ptr, Pet	petitioner
PT	pre-trial

PTR	petition to revoke
Ptf, TT	plaintiff
PSW	public service work
PSF	probation service fee
PU	prove up
rest rest'n	restitution
RSC RTSC	rule to show cause
Rsp, Rspt, Rspdt	respondent
rt	right
SA	state's attorney
SAA	substance abuse awareness program
sanc	sanctions
SJ, sum J	summary judgment
SO	scheduling order
soc hist, sh	social history
SOJ	substitution of judge
SOL	stricken off with leave to reinstate
SOL	statute of limitations
SOS	secretary of state
SPTR	supplemental PTR
SSS	statutory summary suspension
stc, stc'g	sentence, sentencing
TBC	trial by court
TBC	to be current
TC, TCC	telephone conference call
TCTD	time chargeable to Dft
TPR	termination of parental rights
TTHA	time to hire attorney
TTP	time to pay
TTRC	transfer to reporting calendar
TSS	traffic safety school
UOS	uniform order of support
VIP	victim impact panel
W	warrant
w/	with
WD	withdraw
WR	work release
X, Xs	time, times
XP	ex parte (w/ one side only)
XPJ	ex parte judgment

These abbreviations are not necessarily recommended, but they are reportedly used in 4th Circuit docket entries.
Please report other abbreviations for inclusion to Chief Judge's Office (618) 283-2030.

11-04

CIVIL DOCKET ENTRIES

Because we are a circuit where judges handwrite their own docket entries, it is crucial for judges to write legibly.

Some judges write their initials to begin the entry; others write their last name. If a court reporter is not present, do not leave the court reporter space blank. Either write a dash or write "none". This will save the clerks and Karen much time and effort when official records are being created.

Consider always starting the body with who is present in court – but not all judges do that. On those occasions that it is necessary to look back and find out who was in court, you'll be glad you noted those present. If there are multiple parties, you may wish to note which Π or Δ is there.

1-15-01	Judge ----	Π with Atty Jones & Δ Brown by Atty Smith and Δ Green pro se...

Sometime it is necessary to note who is not present:

1-15-01	Judge CR	Π by Atty Jones. Δ FTA on RSC. Body attachment with $200 bond, no 10%.

An exception to listing who is present is if alias summons is to issue. You know only one side was present.

1-15-01	Judge CR	2nd alias summons for 2-15-01 at 9 a.m.

An excellent policy is never to let an open file leave the bench without a new court date. The clerks and, to a certain extent, the judges must file periodic reports on caseloads. Also, judges must periodically go through all pending files in the clerk's office to set open but inactive cases to get them dismissed or moving. If every file you get on the bench leaves with a court date, it makes the review of court files much easier. And if a written judgment is needed to close the file, don't consider the file closed until you get the judgment. Set statuses on paperwork until you enter the judgment.

So, never make the following entries:

1-15-01	Judge CR	Π by Atty Jones. No service. Alias to issue upon request. **Instead:** Π by Atty Jones. No service. Alias to issue upon request. Status 4-10-01 at 9 a.m.
1-15-01	Judge CR	Π by Atty Jones and Δ by Atty Smith. BA, to be reset by either atty. **Instead:** Π by Atty Jones and Δ by Atty Smith. BA to be reset by either atty. Unless prior date set, status 7-01-01 at 10 a.m.

1-15-01	Judge CR	Ptr by Atty Jones and Rspdt by Atty Smith. Parties attempting reconciliation. BA, case continued generally. **Instead:** Π by Atty Jones and Δ by Atty Smith. . Parties attempting reconciliation. BA, case set for status 7-01-01 at 9 a.m. If no one appears, case to be dismissed w/o prejudice.

This policy can be applied at your discretion to post judgment matters, but, by definition, the file is already a closed file and there is less reason to give the file a date.

When contested matters of any length are set, it's helpful for the docket sheet (in the file) and the docket sheet (that lists all cases set for a particular day) to state how long the contested cases are estimated to last.

1-15-01	Judge CR	Π by Atty Jones and Δ by Atty Smith. Ms set 2-15-01 at 11 a.m. (1 hour). JT set 3-15-01 at 1:15 p.m. (2 days)

Small claims – Law Under $50,000 – Law Over $50,000

The docket entries are fairly similar for small claims, law under $50,000, and law over $50,000. One major distinction is that some small claims complaints have fill-in-the-blank front pages; therefore, the docket entry of a judgment is a fill-in-the-blank process. **Note:** There is usually no fill-in-the-blank line for the date on the front of a small claims complaint, so, next to your signature, put the date of the judgment. For docket entries other than a judgment, the back of the small claims complaint is often used.

No answer is required is required in a small claims case, while LM's and L's require written answers.

SC's and LM's use "day-date" or "date-certain" summons, which tell a Δ what day to come to court. An L uses a 30-day summons, which tells a Δ to file an answer within 30 days of service. For some reason, many attorneys use a 30-day summons for LM's, but this does not affect jurisdiction.

Here are some sample entries.

1-2-01	Judge CR	Π by Atty Jones. DJ v. Δ for $7,690.45 & c.
1-2-01	Judge CR	Π by Atty Jones. Δ defaulted. PU set 2-1-01 at 9 a.m.
1-25-01	Judge CR	Π with Atty Jones. PU held. Π testifies. ΠX1 (check) admitted. DJ v. Δ for $7,690.45 & c of $95.
1-2-01	Judge CR	Π with Atty Jones. Δ pro se & denies complaint. BT set 2-3-01 at 9 a.m. (2 hrs)
1-2-01	Judge CR	Π with Atty Jones. Δ pro se & denies complaint. Δ given 30 days to file answer. Status set 2-3-01 at 9 a.m.
1-2-01	Judge CR	Π with Atty Jones. Δ to hire atty. Status 2-3-01 at 9 a.m.

Note: some judges write the amount of costs; some don't.

Motions

1-2-01	Judge CR	Π by Atty Jones and Δ by Atty Smith. Arguments heard on Δ's M to Dismiss. M denied. 21 days to Δ to answer. CMC 4-2-01 at 9 a.m.
1-2-01	Judge CR	Π by Atty Jones and Δ by Atty Smith. Arguments heard on Δ's M to Dismiss. M granted. 21 days to Π to amend. 21 days thereafter to Δ to file responsive pleading. Status 3-2-01 at 9 a.m.

Bench Trial

1-2-01	Judge CR	Π w/ Atty Jones and Δ w/ Atty Smith for BT. Opening stmts given. Π calls Δ as an adverse witness. Π calls Mary Bloom. Π testifies. ΠX1 (contract) admitted w/o objection. ΠX2 (check) admitted over objection. Π rests. Δ's M at close of Π's case to dismiss is denied. Δ testifies. ΔX1 (photos) refused. Δ rests. Arguments heard. J vs. for Π vs. Δ for $6,748.55 & c.

Post Judgment

3-4-01	Judge CR	Π by Atty Jones & Δ pro se on CTDA. BA, payment order $50 by the 4th of ea mo begng 4-4-01. ***(Suggestion: only enter payment orders if the Δ agrees in person or in writing.)***
3-4-01	Judge CR	Π by Atty Jones & Δ pro se on CTDA. Δ is examined. No orders. Δ unemployed. CTDA dismissed.
3-4-01	Judge CR	Π by Atty Jones & Δ pro se on CTDA. Δ is examined. No orders. Δ unemployed. Upon request of Δ, this CTDA is continued to 6-4-01 at 9 a.m. Δ understands he must be present. **(Note: *Δ may request this to avoid more costs from a new CTDA issuing.*)**
3-4-01	Judge CR	Π by Atty Jones. RSC vs. Δ for FTA on CTDA. 4-5-01 9 a.m. ***(Note: roughly ½ judges issue warrants on FTAs on CTDAs and ½ issue a RSC w/ personal service required. I'm in the ½ that issue RSCs.)***
4-5-01	Judge CR	**And when Δ for FTA on the RSC issued in the above entry:** Π by Atty Jones. Δ for FTA on RSC. Body attachment w/ $200 bond, no 10%. ***(Note: No court date is needed because it's post J - file is already closed.)***

Dissolution

3-4-01	Judge CR	Ptr w/ Atty Jones. Rspdt has filed his Entry of App. Ptr testifies. Grounds proven. MSA approved. J entered.
3-4-01	Judge CR	**Or the same entry but more thorough:** Ptr w/ Atty Jones. Rspdt has filed his Entry of App. Ptr testifies. Grounds of irreconcilable differences are proven. Parties waive in writing the 2-year separation period. Children First completed. MSA agreement approved. J, which incorporates the MSA, is granted and entered.

3-4-01	Judge CR	Ptr w/ Atty Jones. Rspdt is defaulted. Ptr testifies. Grounds proven. Ct's rulings on remaining issues are read into record. J granted. Status on p/w set 4-4-01 at 9 a.m. **[or: Ct rules on remaining issues as is provided in proposed J.]**
3-4-01	Judge CR	Ptr w/ Atty Jones. Rspdt is defaulted. Ptr testifies. Grounds proven. Ct rules on remaining issues as is stated in proposed J. J granted and entered.
3-4-01	Judge CR	Ptr w/ Atty Jones and Rspdt w/ Atty Smith. Ptr testifies. Grounds proven. Settlement on remaining issues recited by attys, confirmed by parties, and approved by the court. J granted. Atty Jones to prepare J. P/W status 4-4-01 9 a.m.
3-4-01	Judge CR	**A rare docket entry follows because in a truly contested dissolution case, you'd probable file a *Memorandum of Decision* or you'd write "rulings recited into the record" and then announce them rather than write them. Or if matter is agreed and recited, you'd just have a J submitted:** Ptr w/ Atty Jones and Rspdt pro se. Ptr testifies. Grounds proven. Trial held on remaining issues. Ptr testifies. Ptr calls Rspdt as adv witn. PX1 (appraisal), 2 (bank stmt), and 3 (photos) admitted over objection. Ptr rests. Rsdpt testifies and rests. Arguments heard. Rulings on remaining issues: Real Estate: marital home awarded to Ptr. Rspdt awarded lake lot. Personal Pty: parties awarded the pers'l pty now in each of their respective possessions, and bank accounts now in their own names. Plus Ptr awarded the 1998 Camaro and Rspdt awarded the 1996 Ford pick up truck. Debts: Ptr assigned mortgage on marital home. Rspdt to pay debts on Camaro and Ford pick up. Pensions, etc: Ptr awarded her pension from school district. QDRO shall issue re Rspdt's pension giving Ptr ½ interest for years of the marriage. Custody of children: to Ptr. Visitation to Rsdpt: every other Fri 6 p.m. to Sun 6 p.m., 3 weeks in the summer (designate by 5-1 of every year), every other holiday 9 a.m. to 7 p.m.: NY's, Easter, Memorial Day, 7/4, Labor Day, Thanksgiving, Xmas Eve (9 a.m. to 9 p.m.), Xmas Day (9 p.m. on Xmas Eve to 6 p.m. on Xmas Day), and NY's Eve. Holiday to a parent to take precedence over any other custody or visitation time. Parent receiving the children to provide transportation. Support: Rspdt's statutory net income found to be $1000 per week. Ch spt set at $250 per week (25%). Ptr may claim children as tax exemption. Medical: Rsdpt to provide medical/health insurance for children. Parties to equally divide medical, dental, and any other health related expense not covered by insurance. Maintenance: denied and forever barred. Attys fees: Rspdt to pay his own and $1500 of Ptr's. Ptr to pay her remaining atty's fees. J granted. Atty Jones to prepare J, Uniform Order for Spt, w/holding notice, and data sheet. P/W status 4-4-01 at 9 a.m.

3-4-01	Judge CR	**publication case** Ptr with Atty Jones. Rsdpt served by publication and is defaulted. Rulings may be on status matters only. Ptr testifies. Grounds proven. Re remaining issues, [rulings read into the record.] **or write:** Ptr awarded custody of the parties' minor child. Ptr is awarded the following property whose situs is in IL: marital home, household items and furnishings now in the marital home, and her clothing and personal effects. There is no jurisdiction over any other remaining matters. J granted. P/W status 4-4-01 at 9 a.m.

Suggestion: Until a judgment is actually entered, the court file is open. So keep giving paperwork status dates until the J is entered. There are instances in this circuit of no J being entered for years after the case was supposedly concluded.

Rules To Show Cause

3-4-01	Judge CR	Ptr by Atty Jones and Rspdt pro se on Pet'n for RSC. Pet'n, penalties, and rts explained. Rspdt requests PD. Denied because matter is indirect civil contempt. Rspdt waives atty. Ptr testifies. RSC issues. Rspdt given written RSC. Rspdt denies RSC. BT set 3-21-01 10 a.m. (20 min)
3-4-01	Judge CR	**Or where RSC previously issued as basket work per a verified complaint:** Ptr by Atty Jones and Rspdt pro se on RSC. RSC, penalties, and rts explained. Rspdt requests PD. Denied because matter is indirect civil contempt. Rspdt waives atty. Rspdt denies RSC. BT set 3-21-01 10 a.m. (20 min)
3-4-01	Judge CR	Ptr by Atty Jones and Rspdt pro se on Pet'n for RSC. Pet'n, penalties, and rts explained. Rspdt waives atty. Ptr testifies. RSC issues. Rspdt waives written RSC and understands that RSC is for failure to pay ch spt which as of 2-21-01 is in arrears $3211. Parties agree to proceed with 2nd stage of RSC instanter. Rspdt testifies. RX1 (doctor's report). Rspdt rests. Court finds that Rspdt has carried his burden to prove that he is not in willful contempt of court for failure to pay ch spt. Rspdt has suffered an injury that required several months' hospitalization and many more months of recovery. Rspdt had no ability to pay. RSC dismissed. Rspdt is informed that he still owes the ch spt arrearage and future spt even though he was not found in contempt for FTP.
3-4-01	Judge CR	Ptr by Atty Jones and Rspdt pro se on Pet'n for RSC. Pet'n, penalties, and rts explained. Rspdt waives atty. Ptr testifies. RSC issues. Rspdt waives written RSC and understands that RSC is for failure to pay ch spt which as of 2-21-01 is in arrears $3211. Parties agree to proceed with 2nd stage of RSC instanter. Rspdt testifies. RX1 (check stub) admitted w/o objn. Rspdt rests. Court finds that Rspdt has not carried his burden to prove that he is not in willful contempt of court for failure to pay ch spt. Rspdt has continually earned $11 per hour, has 2 bank accounts with balances each over $2000 and **(cont'd)**

		has paid no ch spt for 1-½ years. Parties agree to immediate sentencing. Rspdt testifies. Ptr testifies. Arguments heard. Attys fees of $1200 assessed against Rspdt. Purge order: continuous jail beginning 5-5-01 at 10 a.m. If ch spt of $3211 is paid in full, Rspdt will have purged and will do no jail. Status 5-5-01 at 9 a.m. Rspdt need not appear if he has purged and paid attys fees. Atty Jones to prepare written sentencing (purge) order and after entry, provide to Rspdt and to jail.
3-4-01	Judge CR	**A very common practice in RSC cases in our circuit is that after Rspdt is found in contempt, the case is continued for stc'g and Rspdt is given a chance to purge in the interim:** Ptr by Atty Jones and Rspdt pro se on Pet'n for RSC. Pet'n, penalties, and rts explained. Rspdt admits RSC. Stc'g set 4-4-01 at 9 a.m. Parties agree that Rspdt may purge by paying $3211 ch spt arrearage and $600 atty's fees by stc'g date. If purge, Rspdt need not appear. If no purge, Rspdt must appear.

Notes: 1. Consider issuing RSC per verified petitions only if the petition alleges matters you can take judicial notice of, for example, FTP ch spt and you have clerk's or SDU records. Otherwise, consider taking evidence before issuing the rule. 2. There is no definite term to a jail stc on a RSC (indirect civil contempt). Jail is continually served until compliance is coerced. As a practical matter, judges set periodic statuses while the Rspdt is in jail. 3. No order exists which confuses a jail more than a sentence on a RSC. Jails want to know when a stc begins and ends, and they do not like sentences that have no ending date and that contain instructions that say release the Rspdt if he does such and such. Find out the local practice before actually sentencing someone to jail on a RSC.

Orders of Protection

3-4-01	Judge CR	Ptr pro se testifies. Basis exists for XP OP. Plenary hearing 3-18-01 10 a.m.
3-4-01	Judge ----	**If no ct reptr:** Ptr pro se testifies. Basis exists for XP OP and includes that alleged in paragraph 7 of the petition, including Rspdt striking Ptr in the head. Plenary hearing 3-18-01 at 10 a.m.
3-4-01	Judge CR	Ptr pro se testifies. No basis for XP OP. No emergency exists. Summons to issue for 3-11-01 10 a.m.
3-4-01	Judge ---	**If the hearing is held by telephone:** Hearing held by telephone pursuant to 750 ILCS 60/217(c)(1.5). Petitioner is sworn and testifies. Basis exists for XP OP and includes that alleged in paragraph 7 of the petition, including Rspdt striking Ptr in the head. Plenary hearing 3-18-01 at 10 a.m.
3-14-01	Judge CR	**After XP OP issued and before plenary hearing:** Ptr pro se on M for termination of XP OP and dismissal of case. Rspdt was given notice. No threats or coercion. M granted. XP OP terminated. Clerk to notify sheriff. Case dismissed.
3-24-01	Judge CR	Ptr pro se for plenary hearing. Rspdt was served and is defaulted. Ptr testifies. Basis exists for plenary OP. OP to be served by sheriff.

3-24-01	Judge CR	Ptr pro se and Rspdt pro se. Plenary hearing held. Ptr testifies and rests. Rspdt testifies and rests. Basis shown for plenary OP. Copy given to parties.
3-24-01	Judge CR	No one appears. DWP.

When issuing an OP, consider advising the Petitioner the difference between legal protection (which she/he is actually getting) and physical protection (which she/he is not getting).

Disabled Adult

3-24-01	Judge CR	Ptr w/ Atty Jones and requests temp grdnship. Ptr testifies. Report of Dr. Blue (PX1) admitted. Necessity of temp grdn w/o notice shown. Ptr apptd temp grdn of person & estate w/ res'l placement power. Letters to issue upon filing of oath and approval of bond. Hearing set 4-24-01 9 a.m. Summons to issue. Atty Brown appted GAL.
3-24-01	Judge CR	Ptr w/ Atty Jones & GAL Brown. On M of GAL and for good cause, presence of Rspdt is excused. Ptr testifies. Report of Dr. Blue (PX1) admitted. W/O obj'n by GAL, Rspdt found to be disabled. Ptr appted plenary grdn of person and estate, w/ res'l placemt power. Letters to issue upon filing of oath & approval of bond. GAL to comply w/ §11a-19 and file proof of service. GAL fee set at $150.

Consider opening the statute as you do these unless you do a lot of them. See 755 ILCS 5/11a et seq, especially §'s 3, 4, 9, 11 & 12.

Forcible Entry and Detainer

3-24-01	Judge CR	Π w/ Atty Jones & Δs pro se. Δs admit. J for Π vs. Δs for poss'n and $900 rent and c. Execution stayed until 4-8-01 at 5 p.m.

On staying execution, do parties agree on date Δs are to be out? If not, are their children involved? Do Δs have another place to go? Is it winter? My experience is courts generally give 7 – 21 days, most commonly, 10 – 14 days.

Mental Health

3-24-01	Judge CR	Sts Atty on Pet'n for Involy Admin. **[It's not judicial admission, that's very rare]** No certif attached. Mary Doe testifies. Grounds shown to believe facts in petition are true and that Rspdt is subject to involy admission. Emergency exists requiring immediate hospitalization. Ct order examination & detention pending examination. Order entered. Writ to issue. Status hearing set 4-8-01 at 9 a.m. **[When the Rspdt is transferred to a facility in another county, venue of the case is transferred to that county per 405 ILCS 5/3-800(a). Plan to dismiss case at the status hearing.]**
4-8-01	Judge CR	No one appears. Venue transferred to Sangamon Co per statute. Case dismissed.

Foreclosure

4-8-01	Judge CR	Π w/ Atty Jones. All Δs defaulted. PU held. **[Possibly include:** verified complaint, affidavits, original note and mortgage considered.] J granted and entered.

In the Circuit Court of _____ County _____ Division
_____ District

_____)
)
vs.) No. _____
)
) _____IME_____
_____)

ORDER REFERRING A CASE TO AN IMPARTIAL MEDICAL EXPERT

NATURE OF CASE:

_____

There appears to be a dispute as to the [ ] physical, [ ] mental condition of:

1. Name: _____
   Address: _____
2. Name: _____
   Address: _____
3. Name: _____
   Address: _____

The disputed medical condition is as follows:

_____

_____

The court finds that the parties either have, will, or most probably will, present conflicting expert medical testimony concerning the physical or mental condition of one or more persons involved in this cause and that, therefore, an impartial medical examination of and report on the above-mentioned person(s) pursuant to Supreme Court Rule 215(d) would materially aid the court in a just determination of the case. IT IS ORDERED THAT:

1. The above mentioned person(s) shall appear for examination with respect to the claimed condition in dispute by an impartial medical expert, a specialist in the field of _____, chosen by the Administrative Office of the Illinois Courts, at a time, date and place arranged by the Administrative Office of the Illinois Courts, unless otherwise ordered by this court.

2. The parties or their counsel shall make available to the impartial medical expert, through the Administrative Office of the Illinois Courts, the following records:

_____

_____

_____

3. The physician, within twenty-one (21) days of the examination, shall file his/her report with the Administrative Office of the Illinois Courts. The Administrative Office shall make and distribute copies of the report to this court and the attorneys for the parties.

4. Any party failing to appear for examination and evaluation on the date, time and place arranged by the Administrative Office of the Illinois Courts may be subject to sanctions ordered by this court under Supreme Court Rule 219(c).

5. A signed copy of this order shall be sent this day to **Paul Taylor, Attorney, Administrative Office of the Illinois Courts,3101 Old Jacksonville Road, Springfield, IL 62704-6488 (ph: 217/782-9273)**, by attorney for _____.

Attorney for Plaintiff:
Name: _____
Address: _____
_____
Telephone: _____

_____
Judge

Attorney for Defendant:
Name: _____
Address: _____
_____
Telephone: _____

_____
Date

COMMON DOCKET ENTRIES
CRIMINAL CASES

Prior to the First Appearance of the Defendant		
1-8-01	Judge ----	***Assume Δ arrested on weekend, and you set bond over phone, some judges make no entry but it's advisable to make a record of setting bond:*** SA telephoned court Sat morn 1/6/01. Δ in jail. Prob cause for bond of $20,000 for burglary. Court phoned jail to have jail inform Δ of bond. ***If bond made, jail will give date; if bond not made, he'll be brought to ct***
1-8-01	Judge CR	***Assume that a charge has just been filed:*** Based on testimony of SA, prob cause for warrant with $20,000 bond.
1-8-01	Judge CR	SA and GJ foreman. Indictment returned in open court. Warrant with $20,000 bond.
1-8-01	Judge CR	***Assume Δ already charged by info, SA then sought indictment:*** SA and GJ foreman. Indictment returned in open court. **[could also add:** Prior bond to stand. Prior court date of 1-20-01 at 10 a.m. to stand.**]**
Notes: 1. If you don't have a court reporter, put a dash or write "none" because if you leave it blank, clerks and Karen don't know if there was really was no reporter or you forgot to write who it was. 2. Some judges write their initials on the docket sheet. Some write their last name.		

First Appearance		
1-8-01	Judge CR	SA and Δ. Info to Δ. Prob cause for bond of $20,000. Bond and trial in absentia explained. PD apptd. 1st app w/ atty [*or for some counties, prelim*] 1-22-01 at 10 a.m. ***(assumes a felony)***
1-8-01	Judge CR	SA and Δ. Info to Δ. Prob cause for bond of $5,000 w/ condition of no contact with Vicky Victim. Bond explained. PD apptd. 1st app w/ atty 1-22-01 at 10 a.m. ***(assumes a misdemeanor)***
1-8-01	Judge CR	***Assume warrant with bond previously issued for this felony:*** SA and Δ. Info to Δ. Bond and trial in absentia explained. PD apptd. 1st app w/ atty 1-22-01 at 10 a.m. **[Not all SA's want trial in abstentia explained.]**
1-8-01	Judge CR	***Assume bond previously set over wkend for felony by a different judge:*** SA and Δ. Info to Δ. SA informs court J. Smith set bond over weekend at $20,000. Bond and trial in absentia explained. Δ to hire atty. 1st app w/ atty 1-22-01 at 10 a.m.
1-8-01	Judge CR	ASA and Δ. Info to Δ. Δ to hire atty. On M of ASA, recog bond of $2,000 w/ condition of no contact with Vicky Victim. App w/ atty set 1-25-01 10 a.m.
1-8-01	Judge CR	***Assume msdmr warrant had already issued and Δ posted bond*** ASA and Δ. Info to Δ. PD apptd. Arr'mt 1-22-01 at 10 a.m.
Notes: 1. If a PTR, just substitute "PTR" for "info". 2. Most judges do not inform of trial in absentia for misdemeanors. Some do not for felonies unless the State asks that it be done. 3. At 1st appearance if Δ to hire a private atty, don't set for prelim. Set for 1st app w/ atty. But if Δ gets PD, some counties do set prelim immediately and some don't. 4. In counties with multiple ASAs, you may differentiate by 1st initial of last name: ASA/W. But many judges don't get that specific.		

First Appearance with Attorney		
1-18-01	Judge CR	***Assume felony because almost all 1st appearances with an attorney for misdemeanors are treated as arraignments:*** SA and Δ with PD. Prelim set 1-25-01 at 10 a.m.

Preliminary Hearing		
1-25-01	Judge CR	SA and Δ with PD. Prelim held. State calls Officer John Doe. Prob cause found. Arrmt 2-12-01 at 10 a.m.
1-25-01	Judge CR	SA and Δ with PD. Prelim held. State calls Officer John Doe. Prob cause found. Arrmt waived. PT 3-1-01 at 10 a.m. JT 3-8-01 at 8:30 a.m.
1-25-01	Judge CR	SA and Δ with PD. Prelim held. State calls Officer John Doe. No prob cause. Case dismissed. Bond (minus 10%) to be refunded.
1-25-01	Judge CR	SA and Δ with PD. Prelim and arrm't waived. PT 3-1-01 at 10:00 a.m. JT 3-8-01 at 8:30 a.m.

Arraignment		
2-12-01	Judge CR	ASA and Δ with Atty Wilson. Full arrmt. NG plea and JT demand. PT 3-1-01 at 10 a.m. JT 3-8-01 at 8:30 a.m.
2-12-01	Judge CR	ASA and Δ with PD. Arrmt waived. PTR denied. BT set 3-8-01 at 10 a.m.
Notes: Some write "NG plea and JT demand" or "PTR denied" and some don't because everyone knows that with arrmt on charges, there is always a NG plea and JT demand unless otherwise noted. And with a PTR there is always a denial and a bench trial unless otherwise noted.		

Motions		
2-19-01	Judge CR	SA and Δ with PD. Hearing on Δ's bond M. Δ calls Mary Doe. Δ testifies. Δ rests. State calls Officer Morgan. State rests. Arguments heard. Bond reduced to $7500. Bond explained. PT stds for 3-1-01 @ 10 a.m. JT stds for 3-8-01 @ 8:30 am.
2-19-01	Judge CR	SA and Δ with PD. Hearing held on Δ's M to Suppress. Δ calls Officer Smith. Δ rests. State calls Officer Smith and Wilt Witness. State's Ex. 1 (photo) admitted over objection. State rests. Arguments heard. Δ's M to Suppress is granted. Reason stated into record. PT remains 3-1-01 at 10 a.m. JT remains 3-8-01 at 8:30 a.m. ***(even though M was granted, the charge remains pending)***

Notes: Sometimes the state's exhibits are referred to as *State's Exhibits*, as StX1, and more often as *People's Exhibits*, as PX1.

Pre-trial		
3-1-01	Judge CR	SA and Δ with Atty Wilson. JT confirmed. JT stands for 3-8-01 at 8:30 a.m.
3-1-01	Judge CR	SA and Δ with Atty Wilson. On M of Δ to continue & w/o obj'n from SA: PT 4-8-01 at 10 a.m. and JT 4-15-01 at 8:30 a.m.

Plea		
4-8-01	Judge CR	ASA and Δ w/ PD. Neg Plea. $100 f and c. BTA. POA 6-1-01 10 a.m. ***(assumes msdmr plea)***
4-8-01	Judge CR	ASA and Δ w/ PD. Neg Plea. 1 yr pbtn, usual terms, alcohol counseling, $700 f and c. BTA. Pay $100 by 5th of ea mo begng 5-8-01. $10/mo pbtn fee. POA 7-11-01 10 a.m. NNAIC
4-8-01	Judge CR	SA and Δ w/ Atty Wilson. Neg Plea to Ct I, agg bat. Δ stc'd to 2 yrs DOC, 1 yr MSR. Credit for 92 days served. F $2,500 and c. BTA. Δ to report to ct w/in 60 days of release from DOC for paymt order. Cts II and III dismissed. Rt to appeal given.
4-8-01	Judge CR	**Same as above but more thorough:** SA and Δ w/ Atty Wilson. Neg Plea accepted. Victim notified, no objection [or concurs or objects]. Δ pleads gty to Ct I, agg bat. No coercion or improper promises. Factual basis and prior record given. Δ found gty. Per plea, Δ stc'd to 2 yrs DOC, 1 yr MSR. Credit for 92 days served. F $2,500 and c. BTA. Δ to report to court w/in 60 days of release from DOC for payment order. Cts II and III dismissed as part of plea. J on conviction and stc. Rt to appeal given.
4-8-01	Judge CR	**If restitution is assessed, there must be a payment order, so:** SA and Δ w/ Atty Wilson. Neg Plea to Ct I, agg bat. Δ stc'd to 2 yrs DOC, 1 yr MSR. Credit for 92 days served. Rest'n of $1456.44, f $2,500, c. BTA. Δ to pay within 1 year or report to ct w/in 60 days of release from DOC. Cts II and III dismissed. Rt to appeal given.
4-8-01	Judge CR	SA and Δ w/ Atty Wilson. Neg Plea of 2yrs DOC, $1,456.55 rest'n is rejected because Δ has prior attempted murder and victim is permanently disabled. JT stands for 4-15-01 at 8:30 a.m.
4-8-01	Judge CR	SA and Δ w/ PD. Δ makes open plea of gty to burglary. No promises for plea. Pre-stc rept ordered. Bond continues. Stc'g set 5-15-01 at 1 p.m. (2 hrs)

Notes: 1. For felonies to DOC, you never need say if good behavior applies because it always does. For felonies to jail and for misdemeanors to jail, you always need to say if good behavior does or doesn't apply.

2. Probation usually has a probation service fee.

3. Most? many? some? judges do not note anything re victim concurrence or objection.

4. A brief description of terms of a rejected plea and of why you say "no" is helpful if another judge is presented a new plea (or the same one) later in the case.

5. The current law is that if restitution is assessed, a payment order must be given. You can't just say "Report to court within 30 days of release from DOC for a payment order." The

statute seems to limit the payment order to 5 years, 730 ILCS 5/5-5-6(f), with possibly an extension up to 2 years. 730 ILCS 5/5-5-6(i)

6. Right to appeal is usually not given for misdemeanors, unless SA wants it. 6. As with civil cases, for hearings of any length, noting the expected length of time is helpful to clerks and others.

Bench Trial		
4-15-01	Judge CR	ASA and Δ pro se. BT held. State calls Vicky Victim. State rests. Δ testifies. Δ rests. Arguments heard. Δ found gty. $100 f and c. BTA. Pay today.
4-15-01	Judge CR	ASA and Δ w/ PD. BT held. Opening arguments waived. State calls Eyore Witness, Missy Identifier, and Honest Abe. State Ex 1 (photos) and 2 (ax) admitted over objection. State rests. Δ's M to dismiss at close of state's case is denied. Δ calls Mary Doe. ΔX1 (hotel receipt) admitted over objection. Δ rests. State calls Carol Roe in rebuttal. State rests. Arguments heard. Court finds Δ guilty of burglary. Pre-stc invtgn ordered. Bond stands. Stc'g set 5-22-01 at 1 p.m. (1 hr)

Jury Trial		
4-15-01	Judge CR	SA and Δ with Atty Wilson for JT. Voir dire conducted. 12 jurors & 2 alternates sworn. State's M to exclude witnesses is granted w/o objection. Opening stmts given. State calls John Doe, Rick Green, and Steve White. PX1 (fingerprints from window), PX2 (fingerprints of Δ), and PX3 (Δ's written stmt) admitted over obj'n. PX4 (newspaper article) refused. State rests. Δ's M for d.v. denied.
4-16-01	Judge LM	Day 2 of JT. Δ testifies. ΔX1 (hotel receipt) admitted w/o objection. Δ rests. Jury instruction conference held. Closing arguments given. Jury retires to deliberate at 1:45 p.m. At 7:30 p.m., jury sends written question now marked as Ct's Ex 1. Arguments heard. Court to instruct jury as set out in Court's Instruction 1 over objection of state. Jury returns to court to be given additional instruction. Jury returns to deliberate at 8:30 p.m. At 10:30 p.m., jury returns not guilty verdict on Ct I - att'd murder and guilty verdict on Ct II - aggravated battery. Jurors polled and confirm verdicts. Pre-stc invgtn ordered. Bond stands. Stc'g set 5-23-01 at 9:00 a.m. (all day)
		Or assume not guilty verdicts ...At 10:30 p.m., jury returns not guilty verdicts on all counts. Judgment entered on verdicts. Δ ordered released and discharged. **Or**

		...At 10:30 p.m., jury returns not guilty verdicts on all counts. Jurors polled. Judgment entered on verdicts. Bond to be refunded minus bond fee.

Sentencing

5-23-01	Judge CR	SA and Δ with PD for stc'g. No objns to PSI. In aggvtn, state calls Pbtn Off Keene. State rests. Δ calls Mary Doe. Δ testifies. Arguments as to stc'g alternatives heard. Δ exercises rt of elocution. Δ stc'd to 4 yrs DOC, credit for 89 days served, 1 yr MSR, $1000 fine, c, $567.87 rest'n for Vicky Victim. Δ to pay within 1 year or report to ct w/in 60 days of release. Δ's M to stay issuance of mittimus denied. Rt to appeal given.

Extradition

5-23-01	Judge CR	SA and Δ. Extradition is explained. Δ waives atty. Δ waives extradition. Case set 6-3-01 at 10:00 a.m. for status to see if State of Mo has picked up Δ.
6-3-01	Judge CR	SA only. Δ was taken by Mo. Case dismissed.

At the first appearance, tell the defendant something to the effect. "The State of ___ wants a __[Δ's name]__ for the offense of _____. They think you are the same Δ. You can hire an attorney, ask for a court appointed attorney if you cannot afford an attorney, or proceed without an attorney.

"You have 3 choices with or without an attorney. The first is to waive extradition and see if the State of _____ actually comes to pick you up. The second is to actively fight the extradition in this court by filing for a writ of habeas corpus. The only issue at the hearing is identity; you may not present evidence that you are innocent of the charge in _____. The third option is to do nothing and await whether the Governor of Illinois decides to extradite you to the State of _____. "

CONTEMPT
COMPARISON CHART

CIVIL			CRIMINAL	
DIRECT	INDIRECT		DIRECT	INDIRECT
None required	Verified petition. Rule may issue upon petition or after hearing on petition, as court directs.	PETITION	None required	Verified petition or complaint
Same as original cause	Same as original cause	CAUSE OF ACTION	Separate cause "CC" file #	Separate cause "CC" file #
None required	Regular mail or as court	NOTICE	None required	Personal notice
No, if judge did not contribute to the contempt	No, if judge has made a substantial ruling in the cause	SUBSTITUTION OF JUDGE	No, if judge did not contribute to the contempt	Yes
1. To be advised of contemptuous conduct. 2. To make a statement prior to sanctions.	1. Notice 2. Copy of Petition (+Rule) 3. Answer orally or in writing 4. To be heard 5. Subpoena witnesses 6. Cross-examine 7. Atty of choice (not court appointed)	DUE PROCESS RIGHTS	1. To be advised of contemptuous conduct. 2. To make a statement prior to sanctions.	1. Personal notice 2. Copy of charge 3. Subpoena witnesses 4. Cross-examine 5. Presumption of innocence 6. Right against self-incrimination 7. Hire or court appointed attorney
Not applicable	1. Pet: prima facie case for issuance of Rule. 2. Rspdt: preponderance of evidence for affirmative defenses.	BURDEN OF PROOF	Not applicable	Beyond a reasonable
No	No	TRIAL BY JURY	No	No, if sanctions not more than 6 mo jail and/or $500 fine.
Not applicable	Yes	RESPONDENT CALLED AS WITNESS	Not applicable	No
Yes	Yes	RIGHT TO ALLOCUTION before sanctions	Yes	Yes
Indefinite and continuing fine and/or jail sentence until purged by compliance.		SANCTIONS	If jury not allowed, limited to fine not to exceed $500 and /or jail not to exceed 6 months. If jury allowed, unlimited fine/jail, but must be reasonable.	
Yes	Yes	WRITTEN ORDER REQUIRED	Yes	Yes
Yes	Yes	RIGHT TO APPEAL	Yes	Yes

From "Principles of Contempt". Modified by Judge Coady with permission of Judge Shonkwiler.

7/05

Per 730 ILCS 5/5-6-1 [1st column: subsection of supervision statute; 2nd column: statute for offense not eligible]

COURT SUPERVISION NOT AVAILABLE FOR:

§	STATUTE	OFFENSE	QUALIFICATIONS
c	510 ILCS 70/3.01	cruel treatment to any animal	
c	510 ILCS 70/3.03-1	depiction of animal cruelty	
c	510 ILCS 70/4.01	animals in entertainment (fighting, killing) (dog fighting covered by 26-5)	
g i	625 ILCS 5/3-707	operation of uninsured motor vehicle	if a conviction or supervision in the last 5 years for any of these
g	625 ILCS 5/3-708	registration suspended for noninsurance	
g	625 ILCS 5/3-710	display of false insurance card	
g	625 ILCS 5/5-401.3	scrap processors required to keep records	
f	625 ILCS 5/6-104(b)	classification of driver - special restrictions	
j	625 ILCS 5/6-303	DWLS or DWLR when revocation or suspension is for a DUI, SSS, failure to make 5/11-401(b) report	if within the last 10 years, convicted or supervision for DWLS or DWLR
o	625 ILCS 5/6-303	DWLS or DWLR when suspension is for SSS	if 1st DUI offender & (a) failed to get device driving permit or (b) had permit but without ignition interlock device
c-5	625 ILCS 5/6-303	DWLR when revoked for reckless homicide	if 2nd or subsequent DWLR violation
d	625 ILCS 5/11-501	DUI	if a prior conviction or supervision for DUI or if prior plea or stip'n to reckless driving (or aggr'vted) per plea agrmt
f	625 ILCS 5/11-1002.5	school cross walk	
f	625 ILCS 5/11-605	school zones	
f	625 ILCS 5/11-1414	approaching, overtaking, and passing school bus	
f	625 ILCS 5/15-111	wheel and axle loads and gross weights	
f	625 ILCS 5/15-112	officers to weigh vehicles and require removal of excess loads	
f	625 ILCS 5/15-301	permits for excess size and weight	
c	720 ILCS 5/11-9.1	sexual exploitation of a child	
c	720 ILCS 5/12-3.2	domestic battery	
c	720 ILCS 5/12-15	criminal sexual abuse	
e	720 ILCS 5/16A-3	retail theft	if in last 5 yrs conviction or supv'n for retail theft
c	720 ILCS 5/21-1 (b) & (c)	criminal damage to property (fire, explosives)	
c	720 ILCS 5/24-1(a) (1) -(5), (8), (10), (11)	unlawful use of weapons (these are the msdmr §'s)	
c	720 ILCS 5/26-5	dog fighting	
c	720 ILCS 5/31-1	resisting or obstructing a peace officer or correctional institution employee	
c	720 ILCS 5/31-6	escape; failure to report to a penal institution or to report for periodic imprisonment	
c	720 ILCS 5/31-7	aiding escape	
c	any felony	any felony	
k	any IVC moving violation	any IVC moving violation	if 2 prior supervisions w/in last 12 months

Per "h-1": If under 21, only if traffic safety program ordered for any moving violation, graduated license violation, safety belt violation

Per "n": In addition, if under 18, only upon parental appearance and written consent

Per "h": If under 21, only if traffic safety program ordered & no prior supervision for:

SERIOUS TRAFFIC OFFENSES per 625 ILCS 5/1-187.001:

STATUTE	OFFENSE
625 ILCS 5/6-101	relating to no valid license or permit
625 ILCS 5/11-402(a)	relating to leaving scene property dmge
625 ILCS 5/11-403	duty to give info and/or render aid
625 ILCS 5/11-502(a)	illegal transportation of liquor in vehicle
625 ILCS 5/11-601 (>30mph)	speeding if 30 mph or more over limit
625 ILCS 5/11-601.5	speeding - 40 mph or more over limit
625 ILCS 5/11-503	"a violation related to reckless driving"
625 ILCS 5/11-707(b)	driving on left side of a roadway in a no-passing zone
625 ILCS 5/11-707(d)	relating to passing in a no-passing zone
625 ILCS 5/11-1002(e)	relating to failure to yield the right-of-way to a pedestrian at an intersection
625 ILCS 5/11-1008	relating to failure to yield to a pedestrian on a sidewalk;
625 ILCS 5/11-1201	relating to failure to stop for an approaching railroad train or signals
625 ILCS 5/11-1402(b)	relating to limitations on backing upon a controlled access highway

Please report any errors to John Coady

Updated November 7, 2010

MARRIAGE CEREMONY

Introduction

A marriage contract between two persons is the most important and solemn act of their whole lives, and must, therefore, be entered into with a due consideration of its duties and responsibility. A happy marriage means two souls with but a single thought, two hearts that beat as one.

Having impressed upon you the great weight and importance of the step you are about to take, I will now proceed with the solemn rites of matrimony.

TO MAN

Will you have this woman to be your wedded wife, to live together in the estate of Matrimony; to love her, comfort her, honor and keep her, in health and in sickness, in prosperity and in adversity, for better or for worse, whatever your lot in life may be, and forsaking all others, keep thee only unto her, so long as you both shall live?

TO WOMAN

Will you have this man to be your wedded husband, to live together in the estate of Matrimony; to love him, comfort him, honor and keep him, in health and in sickness, in prosperity and in adversity, for better or for worse, whatever your lot in life may be, and, forsaking all others, keep thee only unto him, so long as you both shall live?

TO MAN

You may now invest your bride with her wedding ring.

THE RING

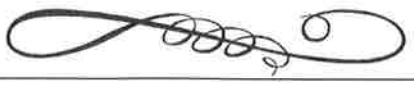
The wedding ring has neither beginning nor end. It is a symbol of endless faith and trust. It is a symbol of love everlasting. It is not only a sustaining power in prosperity, but also a comfort in time of need. May it ever remind you both of the solemn vows and obligations which you have this day taken, and keep you steadfast therein and faithful to the end.

CLASP HANDS

As you now join hands, may you always go hand in hand through life, loving and trusting each other.

Having made satisfactory answers to all questions put to you, and having shown your willingness to become husband and wife, and having solemnly promised to love, honor and comfort each other so long as you both shall live, now, therefore, by virtue of the power vested in me by the Constitution and Laws of the State of Illinois, I pronounce you husband and wife.

May your life be a long and happy one. With best wishes for your future welfare, I congratulate you. (Shake hands)



MARRIAGE CEREMONY

Introduction

We are gathered here to celebrate and memorialize the wedding of _____ and _____.

Happy and successful marriages do not depend upon the location of the ceremony; whether church, cathedral, or here in this lovely setting.

Happy and successful marriages do not depend upon the officiant; bishop, priest, or judge.

Instead, happy and successful marriages are the reward for the love, the honesty, and the hard work invested by the parties.

A marriage contract between two persons is the most important and solemn act of their whole lives, and must, therefore, be entered into with a due consideration of its duties and responsibility.

Having impressed upon you the great weight and importance of the step you are about to take, I will now proceed with the solemn rites of matrimony.

TO MAN

Please repeat after me:

I _____, take you _____ to be my wife,

I promise to love you, comfort you, honor and keep you,

in health and in sickness,

in prosperity and in adversity,

for better or for worse

and to be faithful to you so long as we both shall live

TO WOMAN

Please repeat after me:

I _____, take you _____ to be my husband,

I promise to love you, comfort her, honor and keep you,

in health and in sickness,

in prosperity and in adversity,

for better or for worse

and to be faithful to you so long as we both shall live

TO GROOM

You may now invest your bride with her wedding ring.

TO BRIDE

You may now invest your husband with his wedding ring

These wedding rings are circles, with neither beginning nor end. They are a symbol of endless faith and trust. They are a symbol of love everlasting. Not only a sustaining power in prosperity, but also a comfort in time of need. May they ever remind you both of the solemn vows and obligations which you have this day taken, and keep you steadfast therein and faithful to the end.

CLASP HANDS

Please join hands, and as you do now, may you always go hand in hand through life, loving and trusting each other.

_____ and _____, having made satisfactory answers to all questions put to you, and having shown your willingness to become husband and wife; having solemnly promised to love, honor and comfort each other so long as you both shall live, now, therefore, by virtue of the power vested in me by the Constitution and Laws of the State of Illinois, I pronounce you husband and wife.

YOU MAY NOW KISS YOUR BRIDE

Ladies and Gentlemen, I present to you Mr. and Mrs. _____

A civil union must be entered into with due consideration of its duties and responsibilities. It is important that each of you realize the significance of the step you are about to take, and it is equally important that you not take this step lightly. A civil union carries with it the obligations, responsibilities, protections, and benefits afforded or recognized by the law of Illinois to spouses.

_____ do you agree to enter into a civil union with _____, to live together in union, to love, comfort and honor _____ in health and in sickness, in prosperity and in time of trouble, for better or for worse, and forsaking all others be faithful only to _____ so long as you both shall live?

_____ do you agree to enter into a civil union with _____, to live together in union, to love, comfort and honor _____ in health and in sickness, in prosperity and in time of trouble, for better or for worse, and forsaking all others be faithful only to _____ so long as you both shall live?

[In the event a ring or some other symbol of the union is being used.]

A _____ is a symbol of endless faith, trust and love. It is not only a sustaining power in time of prosperity, it is also a comfort in time of need. May it always remind both of you of the solemn vows and obligations which you have taken this day and keep you faithful to each other so long as you both shall live.

Having made satisfactory answers to all questions put to you, and having shown your willingness to enter into this union, and having solemnly promised to love, honor and comfort each other so long as you both shall live, now therefore, by virtue of the power vested in me by the State of Illinois, I pronounce you united in civil union.

SAME SEX MARRIAGE CEREMONY

Introduction

A marriage contract between two persons is the most important and solemn act of their whole lives, and must, therefore, be entered into with a due consideration of its duties and responsibility. A happy marriage means two souls with but a single thought, two hearts that beat as one.

Having impressed upon you the great weight and importance of the step you are about to take, I will now proceed with the solemn rites of matrimony.

1st PARTY

Will you have this (man / woman) to be your wedded spouse, to live together in the estate of Matrimony; to love him/her, comfort (him / her), honor and keep (him / her), in health and in sickness, in prosperity and in adversity, for better or for worse, whatever your lot in life may be, and forsaking all others, keep thee only unto (him / her), so long as you both shall live?

2nd PARTY

Will you have this (man / woman) to be your wedded spouse, to live together in the estate of Matrimony; to love (him / her), comfort (him / her), honor and keep (him / her), in health and in sickness, in prosperity and in adversity, for better or for worse, whatever your lot in life may be, and, forsaking all others, keep thee only unto (him / her), so long as you both shall live?

BOTH PARTIES

You may now invest your spouse with (his / her) wedding ring.

THE RING

The wedding ring has neither beginning nor end. It is a symbol of endless faith and trust. It is a symbol of love everlasting. It is not only a sustaining power in prosperity, but also a comfort in time of need. May it ever remind you both of the solemn vows and obligations which you have this day taken, and keep you steadfast therein and faithful to the end.

CLASP HANDS

As you now join hands, may you always go hand in hand through life, loving and trusting each other.

Having made satisfactory answers to all questions put to you, and having shown your willingness to become spouses, and having solemnly promised to love, honor and comfort each other so long as you both shall live, now, therefore, by virtue of the power vested in me by the Constitution and Laws of the State of Illinois, I pronounce you wedded spouses.

May your life be a long and happy one. With best wishes for your future welfare, I congratulate you. (Shake hands)

Civil Fee Waiver 735 ILCS 5/5-105

100% Waiver	Receives a **means-based public benefit** (regardless of income)
100% Waiver	Payment would result in **substantial hardship** (regardless of income)
100% Waiver	Available income **125% FPL** or less
75% Waiver	Available income greater than **125%** but does not exceed **150% FPL**
50% Waiver	Available income greater than **150%** but does not exceed **175% FPL**
25% Waiver	Available income greater than **175%** but does not exceed **200% FPL**

Criminal Assessment Waiver 725 ILCS 5/124A-20

100% Waiver	Receives a **means-based public benefit** (regardless of income)
100% Waiver	Payment would result in **substantial hardship** (regardless of income)
100% Waiver	Available income **200% FPL** or less
75% Waiver	Available income greater than **200%** but does not exceed **250% FPL**
50% Waiver	Available income greater than **250%** but does not exceed **300% FPL**
25% Waiver	Available income greater than **300%** but does not exceed **400% FPL**

2021 Federal Poverty Level - MONTHLY Income

Family Size	125% FPL	150% FPL	175% FPL	200% FPL	250% FPL	300% FPL	400% FPL
1	$1,342	1,610	1,878	2,147	2,683	3,220	4,293
2	$1,815	2,178	2,540	2,903	3,629	4,355	5,807
3	$2,288	2,745	3,203	3,660	4,575	5,490	7,320
4	$2,760	3,313	3,865	4,417	5,521	6,625	8,833
5	$3,233	3,880	4,527	5,173	6,467	7,760	10,347
6	$3,706	4,448	5,189	5,930	7,413	8,895	11,860
7	$4,179	5,015	5,851	6,687	8,358	10,030	13,373
8	$4,652	5,583	6,513	7,443	9,304	11,165	14,887
Add amount for each additional person	$473	568	662	757	946	1,135	1,513

ACCESS TO JUSTICE

Figures from: https://aspe.hhs.gov/poverty-guidelines

Civil Fee Waiver 735 ILCS 5/5-105

100% Waiver	Receives a **means-based public benefit** (regardless of income)
100% Waiver	Payment would result in **substantial hardship** (regardless of income)
100% Waiver	Available income **125% FPL** or less
75% Waiver	Available income greater than **125%** but does not exceed **150% FPL**
50% Waiver	Available income greater than **150%** but does not exceed **175% FPL**
25% Waiver	Available income greater than **175%** but does not exceed **200% FPL**

Criminal Assessment Waiver 725 ILCS 5/124A-20

100% Waiver	Receives a **means-based public benefit** (regardless of income)
100% Waiver	Payment would result in **substantial hardship** (regardless of income)
100% Waiver	Available income **200% FPL** or less
75% Waiver	Available income greater than **200%** but does not exceed **250% FPL**
50% Waiver	Available income greater than **250%** but does not exceed **300% FPL**
25% Waiver	Available income greater than **300%** but does not exceed **400% FPL**

2021 Federal Poverty Level - ANNUAL Income

Family Size	125% FPL	150% FPL	175% FPL	200% FPL	250% FPL	300% FPL	400% FPL
1	$16,100	19,320	22,540	25,760	32,200	38,640	51,520
2	$21,775	26,130	30,485	34,840	43,550	52,260	69,680
3	$27,450	32,940	38,430	43,920	54,900	65,880	87,840
4	$33,125	39,750	46,375	53,000	66,250	79,500	106,000
5	$38,800	46,560	54,320	62,080	77,600	93,120	124,160
6	$44,475	53,370	62,265	71,160	88,950	106,740	142,320
7	$50,150	60,180	70,210	80,240	100,300	120,360	160,480
8	$55,825	66,990	78,155	89,320	111,650	133,980	178,640
Add amount for each additional person	$5,675	6,810	7,945	9,080	11,350	13,620	18,160

ACCESS TO JUSTICE

Figures from: https://aspe.hhs.gov/poverty-guidelines

ILLINOIS JUDICIAL BRANCH

Updated January 2021

Bench Card: Civil Fee and Criminal Assessment Waivers

Before Evaluating Applications

- Applications can be decided on the basis of the information in the application, without a hearing, unless the application gives rise to a factual issue.
- A judge has the discretion to:
  - hold an in-person hearing and/or order the applicant to produce supporting documents;
  - allow deferred or installment payments; and
  - grant a waiver based on substantial hardship.
- All waiver applications should be reviewed independent of the underlying pleading or charge.

How Does a Judge Determine Whether an Applicant is Indigent and Qualifies for a Waiver?

There are three ways an applicant qualifies for a FULL waiver:

1. **Means-Based Public Benefit:** Applicant receives assistance from one or more of the following governmental public benefits programs:
   - Supplemental Security Income (SSI) (*Not* Social Security Retirement, Disability, or Survivors benefits)
   - Aid to the Aged, Blind and Disabled (AABD)
   - Temporary Assistance for Needy Families (TANF)
   - Supplemental Nutrition Assistance Program (SNAP) (formerly Food Stamps)
   - General Assistance (GA), Transitional Assistance, or State Children and Family Assistance

NOTE: receiving another type of public benefit that is not on this list means that the person doesn't automatically qualify for a full waiver under statute, but may still qualify based on hardship or income level.

2. **Substantial Hardship:** Applicant demonstrates that paying court fees would pose a substantial hardship.
3. **Household Income:** Applicant's available household income is at or below a percentage of the Federal Poverty Level (FPL): 125% in civil cases or 200% in criminal cases for a full waiver.

NOTE: for both criminal and civil cases, parties are also considered indigent and the parties' fees/assessments can be waived if a legal services provider certifies that the person is eligible to receive those free legal services.

Applicants must use the Statewide Standardized Forms

- Forms suites include:
  - Getting Started overview
  - How to instructions on asking for a waiver
  - Application for applicants to fill out
  - Order for judges to complete
- One suite for civil cases and another for criminal cases
- Available at http://illinoiscourts.gov/Forms/approved/Circuit.asp

1. Determining Indigency – Means-Based Public Benefits

An applicant who receives one or more of the listed means-based public benefits automatically qualifies for a full waiver. These benefits require rigorous screening and regular recertification. Most programs have asset caps, but allow recipients to own one home and one car. Many public benefits recipients work or own property but still live in or near poverty due to low wages, irregular work schedules, dependents, or declining property values. *If an applicant establishes they receive a qualifying public benefit, analysis is complete and the full waiver SHALL be granted.*

NOTE: For more information on the specific criteria and screening procedures for the individual benefit programs, please visit https://www.ssa.gov/ssi/ or http://www.dhs.state.il.us/page.aspx.

Public Benefits as a Proxy for Indigency

Means-based public benefits programs are:

- Contingent on proof of income, assets, identity, legal status, and other eligibility criteria.
- Recertified on a regular basis.
- Verified by experienced agencies with access to federal databases that can check bank accounts, employment history, and immigration records.
- Proven to have minimal levels of fraud.

Relying on these programs will:

- Reduce the administrative burden on judges and staff.
- Increase efficiency in processing waiver applications.
- Improve statewide consistency of application handling.
- Avoid the appearance of bias by adhering to objective criteria.
- Reduce redundancy for applicants who have already gone through background and income screening.
- Avoid duplication of work by multiple government agencies.

2. Determining Indigency- Substantial Hardship

If an applicant does not receive a public benefit or their income is higher than the stated FPL percentage, they can still qualify for a waiver. A judge may exercise discretion and grant a full waiver to an applicant who can demonstrate that paying the court fees or assessments would constitute a substantial hardship to the individual or the family. Factors to consider, in addition to public benefits and income, are the applicant's monthly expenses and supporting documents showing the fee or assessment would be a substantial hardship.

3. Determining Indigency – Household Income

If an applicant does not receive a means-based public benefit, the thing to look at before substantial hardship is income. The most common measure of indigency is the Federal Poverty Level (FPL), which is set and used by the US government. The FPL is updated each year and applies uniformly throughout the US without adjustment for variation in cost of living. 100% of the 2021 *annual* FPL for one person is $12,880 and $26,500 for a family of four, and the *monthly* FPL is $1,073 for one person and $2,208 for a family of four.

NOTE: For more information on the federal poverty level, visit https://aspe.hhs.gov/poverty-guidelines or see the chart to the right or the separate 2021 annual and monthly charts.

MONTHLY Federal Poverty Level 2021

#	125% FPL	150% FPL	175% FPL	200% FPL	250% FPL	300% FPL	400% FPL
1	$1,342	1,610	1,878	2,147	2,683	3,220	4,293
2	$1,815	2,178	2,540	2,903	3,629	4,355	5,807
3	$2,288	2,745	3,203	3,660	4,575	5,490	7,320
4	$2,760	3,313	3,865	4,417	5,521	6,625	8,833
5	$3,233	3,880	4,527	5,173	6,467	7,760	10,347
6	$3,706	4,448	5,189	5,930	7,413	8,895	11,860

Full or Partial Waivers

If an applicant's available household income is 125% or less of FPL (civil cases) or 200% or less of FPL (criminal cases), judges SHALL grant them full waivers. If their income falls in the ranges listed below, judges SHALL grant the corresponding partial waiver. Use these charts to determine full or partial waivers:

Civil Fee Waiver 735 ILCS 5/5-105

100% Waiver	Receives a **means-based public benefit** (regardless of income)
100% Waiver	Payment would result in **substantial hardship** (regardless of income)
100% Waiver	Available income **125% FPL** or less
75% Waiver	Available income greater than **125%** but does not exceed **150% FPL**
50% Waiver	Available income greater than **150%** but does not exceed **175% FPL**
25% Waiver	Available income greater than **175%** but does not exceed **200% FPL**

Criminal Assessment Waiver 725 ILCS 5/124A-20

100% Waiver	Receives a **means-based public benefit** (regardless of income)
100% Waiver	Payment would result in **substantial hardship** (regardless of income)
100% Waiver	Available income **200% FPL** or less
75% Waiver	Available income greater than **200%** but does not exceed **250% FPL**
50% Waiver	Available income greater than **250%** but does not exceed **300% FPL**
25% Waiver	Available income greater than **300%** but does not exceed **400% FPL**

Considerations When Granting or Denying Applications

- A judge must specify a reason in the order if the waiver application is denied per SCR 298 and 404.
- Rely on the objective criteria to review waiver applications to avoid potential influence or appearance of bias.
- Do not make assumptions based on an applicant's appearance, clothing, possessions, or demeanor.
- Many applicants have disabilities, both visible and invisible, that can interfere with their ability to work.
- Having a job is not an automatic disqualifier. A federal minimum wage employee with one minor child can work 40 hours a week and still fall under the federal poverty level.
- Having a lawyer is not an automatic disqualifier. Some pro bono and limited scope attorneys represent clients in or near poverty. Other lawyers work on contingency or are paid by someone other than the applicant.
- Owning a home is not an automatic disqualifier. Many homeowners are "underwater." Even those with equity in the home may live in poverty since it is not a fungible asset.
- There are no residency requirements for waiver applications.

For additional information, please contact:
Administrative Office of the Illinois Courts
Access to Justice Division
AccessToJustice@illinoiscourts.gov

Updated January 2021

ILLINOIS SUPREME COURT COMMISSION
ACCESS TO JUSTICE
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Top 10 Rules: 2-615 Motions to Dismiss

Hon. Robert C. Bollinger

1) The motion challenges the legal sufficiency of the complaint on the basis of defects appearing on its face.
2) In ruling on such a motion, only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered.
3) Affirmative matter, such as affidavits or depositions, are not considered.
4) The court reviews the allegations of the complaint in the light most favorable to the plaintiff to determine if they are sufficient to establish a cause of action upon which relief may be granted.
5) All facts apparent from the face of the pleadings, including the exhibits attached thereto, must be considered.
6) The pleader must state the facts essential to his cause of action. "Well-pleaded facts" is a term that stands in contrast to "conclusions." To the extent that the complaint offers conclusions unsupported by allegations of fact, the court does not accept those conclusions as true. A pleading which merely paraphrases the law without stating the facts is insufficient.
7) The court should not grant the motion unless it is clear, from the factual allegations and the reasonably permissible inferences therefrom, that no set of facts could be proved that would entitle the plaintiff to recovery under the law.
8) Although all pleadings are to be liberally construed, a complaint must, nonetheless, state a cause of action by allegation of facts. The failure to do so cannot be aided by any principle of liberal construction. Defects in a party's pleadings cannot be cured by argument.
9) The purpose of requiring that defects in pleadings be attacked by motion is to point out the defects in the pleadings so that the complainant will have an opportunity to cure them before trial.
10) The standard of review is *de novo*. On review of an order granting a section 2-615 motion, all well-pleaded facts and all reasonable inferences from them are taken as true.

See 735 ILCS 5/2-615; 735 ILCS 5/2-603(c); *Knox College v. Celotex Corp.*, 88 Ill.2d 407 (1981); *West v.* Kirkham, 147 Ill.2d 1(1992); *Mount Zion State Bank & Trust v. Consolidated Communications, Inc.,* 169 Ill.2d 110 (1995); *Green v. Rogers*, 234 Ill.2d 478 (2009); *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263 (1992); *Pickel v. Springfield Stallions, Inc.*, 398 Ill.App.3d 1063 (4th Dist. 2010).

October 2011

Top 10 List: Motions for Leave to File Amended Complaint

By Hon. Robert C. Bollinger, Hon. Katherine M. McCarthy and Hon. Joseph D. Panarese

1. Initially, the Court should make a determination whether the issues involve Sec.(a), (b) ,(c) or (d) of 2-616.
2. 2-616 (a) allows for liberal amendment of pleadings if done before the running of the Statute of Limitations. - standard used is "just and reasonable terms"
3. Factors to consider in a 2-616 (a) analysis;
   A. Whether an amendment would cure a defect in a pleading
   B. Whether other party would be prejudiced or unfairly surprised
   C. Whether motion to amend is timely; and
   D. Whether the party had previous opportunities to amend

   See *Bates v. Richland Sales Corp.*, 346 Ill.App.3d 223 (4th Dist. 2004); *Lee v. Chicago Transit Auth.*, 152 Ill.2d 432 (1992)
4. Section 2-616 (b) analysis: MOST HOTLY CONTESTED ISSUES
   - This section allows for a post - limitations period amendment to a pleading if these 2 requirements are met - Relation Back Doctrine:
      A. Original pleading was timely filed; and
      B. The cause of action asserted in the amended pleading "grew out of the same transaction or occurrence" set up in the original pleading.
5. Amendments do relate back when there is "a sufficiently-close-relationship" between the original and the new claims. Factors to consider;
   A. Events alleged were close in time and subject matter
   B. Facts are part of the events leading up to the originally alleged injury.

   Porter v. Decatur Memorial Hosp., 227 Ill.2d 243 (2008)
6. Amendments DO NOT relate back when;
   A. Original and amended set of facts are separated by a significant lapse of time;
   B. The two sets of facts are different in character; or
   C. The two sets of facts lead to arguably different injuries - See *Porter,* cited above
7. The court should liberally construe the requirements of 2-616(b) in favor of hearing a plaintiff's claim, even after the running of the Statute of Limitations. -See *Porter* cited above
8. Notice to the Defendant will be satisfied if the new allegations arise out of the general fact situation set forth in the original pleadings. See *Porter* - cited above
9. Section 2-616(d) analysis: First determine if truly a "mistaken identity" situation (wrong party is actually sued) and not a misnomer situation (real party sued but under wrong name) - Relation Back doctrine does not apply unless the factors set forth in (d) are satisfied:
   A. Original complaint was timely filed; and
   B. Original and Amended complaint grew out of the same transaction/occurrence; and
   C. The person had knowledge, within the Statute of Limitations period PLUS "the time for service permitted under Rule 103 (b)" that the action would have been brought against him but for the mistaken identity. (quoted portion added by amendment to Section 2-616(d) effective Jan. 2002).

   See *Fassero v. Turigliatto*, 349 Ill. App.3d 368 (4th Dist. 2004)
10. If the question is raised by an Objection to Plaintiff's Motion for Leave to File an Amended Complaint, the trial court's ruling is reviewed under an abuse of discretion standard; However, if the issue is raised by a 2-619 Motion To Dismiss for failure to comply with the statute of limitations, then the review is "de novo". - See *Porter* cited above

Top 10 Rules: 2-615 Motions to Dismiss

Hon. Robert C. Bollinger

1) The motion challenges the legal sufficiency of the complaint on the basis of defects appearing on its face.
2) In ruling on such a motion, only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered.
3) Affirmative matter, such as affidavits or depositions, are not considered.
4) The court reviews the allegations of the complaint in the light most favorable to the plaintiff to determine if they are sufficient to establish a cause of action upon which relief may be granted.
5) All facts apparent from the face of the pleadings, including the exhibits attached thereto, must be considered.
6) The pleader must state the facts essential to his cause of action. "Well-pleaded facts" is a term that stands in contrast to "conclusions." To the extent that the complaint offers conclusions unsupported by allegations of fact, the court does not accept those conclusions as true. A pleading which merely paraphrases the law without stating the facts is insufficient.
7) The court should not grant the motion unless it is clear, from the factual allegations and the reasonably permissible inferences therefrom, that no set of facts could be proved that would entitle the plaintiff to recovery under the law.
8) Although all pleadings are to be liberally construed, a complaint must, nonetheless, state a cause of action by allegation of facts. The failure to do so cannot be aided by any principle of liberal construction. Defects in a party's pleadings cannot be cured by argument.
9) The purpose of requiring that defects in pleadings be attacked by motion is to point out the defects in the pleadings so that the complainant will have an opportunity to cure them before trial.
10) The standard of review is *de novo*. On review of an order granting a section 2-615 motion, all well-pleaded facts and all reasonable inferences from them are taken as true.

See 735 ILCS 5/2-615; 735 ILCS 5/2-603(c); *Knox College v. Celotex Corp.*, 88 Ill.2d 407 (1981); *West v.* Kirkham, 147 Ill.2d 1(1992); *Mount Zion State Bank & Trust v. Consolidated Communications, Inc.*, 169 Ill.2d 110 (1995); *Green v. Rogers*, 234 Ill.2d 478 (2009); *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill.2d 263 (1992); *Pickel v. Springfield Stallions, Inc.*, 398 Ill.App.3d 1063 (4th Dist. 2010).

October 2011

Top 10 Rules: 2-619 Motions to Dismiss

By Hon. Robert C. Bollinger, Hon. Katherine M. McCarthy and Hon. Joseph D. Panarese

1. The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation.
2. A 2-619 motion admits the legal sufficiency of the complaint and presumes a valid cause of action exists but raises defects, defenses or other affirmative matters which appear on the face of the complaint or are established by external submissions which negate the plaintiff's cause of action.
3. "Affirmative matter," for purposes of avoiding the effect of or defeating the claim, is something in the nature of a defense that negates an alleged cause of action completely or refutes crucial conclusions of law or conclusions of material fact unsupported by allegations of specific fact contained in or inferred from the complaint.
4. The affirmative matter must be something more than evidence offered to refute a well-pleaded fact in the complaint, for, as in the case of a motion under section 2-615, such well-pleaded facts must be taken as true for the purposes of a 2-619 motion to dismiss.
5. In ruling on the motion, the court considers: (i) the pleading attacked; (ii) any supporting or opposing affidavits; and (iii) other materials of the type considered on summary judgment motions.
6. The first inquiry for the court is whether the Defendant has shown its entitlement to judgment - i.e., do the supporting materials, when construed in the light most favorable to the plaintiff, establish the affirmative matter on which the defendant relies? If not, the court must deny the motion.
7. If the defendant meets his initial burden, the court next asks whether the plaintiff has shown that the defendant is not entitled to judgment - i.e., do the opposing materials deny the facts alleged or establish facts obviating the grounds of defect. If not, the Court must grant the motion.
8. If the plaintiff shows that the affirmative matter hinges on a genuine issue of material fact, the court may: (i) deny the motion without prejudice to the Defendant's right to raise the affirmative matter by answer; or (ii) decide the genuine issue by proceeding to the second stage.
9. The court does not have the option of deciding a genuine issue of material fact - i.e., cannot proceed to the second stage - if the action is one in which a party has a right to jury trial and the opposing party has made a timely jury demand.
10. The dismissal is reviewed *de novo*. The reviewing court must consider whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.

735 ILCS 5/2-619; *O'Casek v. Children's Home and Aid Soc. of Illinois*, 229 Ill.2d 421 (2008); *Turner v. 1212 S. Michigan Partnership*, 355 Ill.App.3d 885 (1st Dist. 2005); *Zahl v. Krupa*, 365 Ill.App.3d 653 (2nd Dist. 2006); *Covinsky v. Hannah Marine Corp*, 388 Ill.App.3d 478 (1st Dist. 2009).

Top 10 Rules: Motions for Summary Judgment

By Hon. Robert C. Bollinger, Hon. Katherine M. McCarthy and Hon. Joseph D. Panarese

1. Summary judgment is proper where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."
2. A motion for summary judgment does not ask the court to try a question of fact, but to determine if a question of material fact exists that would preclude the entry of judgment as a matter of law.
3. Although summary judgment aids in the expeditious disposition of a lawsuit, it is a drastic measure and should be granted only if the moving party's right to judgment is "clear and free from doubt."
4. The moving party has the initial burden of production, which may be met by (1) affirmatively disproving the plaintiff's case by introducing evidence that, if uncontroverted, would entitle the movant to judgment as a matter of law (traditional test); or 2) by establishing that the plaintiff lacks sufficient evidence to prove an essential element of the cause of action (*Celotex* test).
5. Until the movant's initial burden is met, the respondent is not required to submit evidentiary material in opposition to the motion. While a plaintiff is not required to prove his case in response to a motion for summary judgment, he must present a factual basis that would arguably entitle him to judgment.
6. Unlike a pleading motion, the respondent cannot rely upon the factual allegations in his pleading to defeat the motion, nor can the movant rely upon his pleading to support the motion.
7. Discovery depositions and other evidentiary material filed in support of the motion must be taken as true if left uncontroverted by counter-evidentiary material, such as counter-affidavits.
8. Supreme Court Rule 191(a) specifies the requirements for affidavits submitted in support of or in opposition to motions for summary judgment.
9. Supreme Court Rule 191(b) specifies the procedure to be followed when the respondent requires additional discovery before responding to the motion, and specifies the form and content requirements for affidavits that must be filed in support of a motion to continue the hearing on the motion.
10. The appellate court reviews *de novo* the trial court's grant of summary judgment. The reviewing court must ascertain whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.

ILCS Sct. R. 191; 735 ILCS 5/2-1005; *Carroll v. Paddock*, 199 Ill.2d 16 (2002); *Mydlach v. DaimlerChrysler Corp.*, 226 Ill.2d 307 (2007); *Addison v. Whittenberg*, 124 Ill.2d 287 (1988); *Williams v. Covenant Medical Center*, 316 Ill.App.3d 682 (4th Dist. 200); *Zahl v. Krupa*, 399 Ill.App.3d 993 (2nd Dist. 2010); *Johnson v. Ortiz*, 244 Ill.App.3d 384 (1st Dist. 1993).

Top 10 Rules: Post Judgment Motions

By Hon. Robert C. Bollinger, Hon. Katherine M. McCarthy and Hon. Joseph D. Panarese

1. Post judgment motions are proper where after the entry of a judgment from the court, either party wants to contest the court's decision.

2. Motions after the entry of a judgment in non-jury cases - when any party may within 30 days file a motion for a rehearing, a retrial, modification of the judgment or to vacate the judgment or for other relief.

3. Motions for rehearing or reconsideration are to point out any procedural or legal mistakes by the court or the parties, and requests that the court review the case.

4. Motions for a new trial usually occurs when there is a showing of an abuse of discretion by the court, accident or surprise to the parties that they had no reason to expect, newly discovered evidence which would change the outcome of the trial, insufficient evidence to justify the court's decision or that the court's decision violates the law.

5. Motions for modification of the judgment - the party must show the court that the judgment conflicts with the statements of the decision.

6. Motions to vacate the judgment (within 30 days) – need only show good cause and whether substantial justice is being done and if it is reasonable to compel a trial on the merits (no affidavit needed). 2 -1301(e)

7. Motions to vacate the judgment (over 30 days) - must show (by a preponderance of the evidence) a meritorious defense, due diligence in presenting the defense, and due diligence in filing the petition. Must be supported by affidavit or other appropriate showing as to matters not of record. 2 -1401(b)

8. Motions to vacate DWP – (dismissed the cause for want of prosecution) – when moving party fails to state new facts that were not of record and fails to show due diligence. Can re-file within one year or within the remaining period of limitation.

9. Motions for JNOV – (judgment not-withstanding the verdict) – granted when "all the evidence, when viewed in it's aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on the evidence could ever stand."

10. Motions to Quash Service and Vacate Judgment – the affidavit of service is *prima facie* proof of service, which can be overcome only by clear and convincing proof and supported by an affidavit. 2-203, 2-301 and 2-1401

735 ILCS 5/203, 735 ILCS 5/2-301, 735 ILCS 5/2-1203, 735 ILCS 5/2-1301, 735 ILCS 5/2-1401, 735 ILCS 5/13-217, *Jackson v. Hooker*, 397 Ill.App3d 614 (1st Dist. 2010), *People v. Coleman*, 206 Ill.2d, 289 (2002), *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill.2d 494,510 (1967) *Harris v. American Legion John T. Shelton Post No. 838*, 12 Ill. App.3d 235, 237 (1st Dist. 1973).

Top 11 List: Section 2-615 Motions

By Hon. Robert C. Bollinger, Hon. Katherine M. McCarthy and Hon. Joseph D. Panarese

1. REQUIRE THAT ANY PLEADING MOTION BE LABELED WITH APPROPRIATE SECTION OF CCP
   - Make the pleading party differentiate between 2-615 and 2-619 motions!
   - See *Illinois Graphics Co. v. Nickum*, 159 Ill.2d 469 (1994)
2. The motions challenges the legal sufficiency of the complaint on the basis of defects appearing on its face (Don't consider anything outside the "4 corners" of the pleading , including attachments, affidavits , depositions , other evidentiary matters or legal authority)
3. Judicial admissions in the record or matters of judicial notice may be considered. *Oldendorf v. General Motors*, 322 Ill. App.3d 825 (2nd D. 2001)
4. Exhibits attached to the complaint may be considered and trump conflicting factual allegations in the complaint itself. *Bianchi v. Savino Del Bene*, 329 Ill.App.3d 908 (1st D. 2002)
5. Motion may be brought against any pleading; complaint, answer, counterclaim, or affirmative defense.
6. Differentiate between well-pleaded facts and unacceptable conclusions of law and/or facts.
7. If answer on file, do not consider a Motion to Strike or Dismiss without granting leave of court , unless the pleading fails to state any recognized cause of action (as opposed to a defective attempt to state a valid cause of action)
8. Differentiate between striking the pleading or parts thereof and dismissing the cause of action or defense. A motion to dismiss should be granted only if there is no possible set of facts in support of allegations that would entitle the pleader to relief. See *Bejda v. SGL*, 82 Ill.2d 328 (1980)
9. Any doubt as to whether the pleader is allowed to amend should be resolved in favor of allowing amendment.
10. Make a record – set forth your reasons either on the record or in the order.
11. The granting of a 2-615 motion to dismiss is reviewable "de novo"; the decision to deny leave to amend is reviewable under abuse of discretion standard. *Keefe-Shea Joint Venture v. City of Evanston*, 364 Ill. App. 3d 48 (2nd D. 2005); *Beahringer v. Page*, 204 Ill.2d 363 (2003)

SUBSTITUTION OF JUDGE----Judge Michael B. Hyman, Circuit Court of Cook County

Civil 735 ILCS 5/2-1001

2-1001(a) (1) --Sua Sponte Substitution of Judge:

True or False:

Trial judge may grant a substitution of judge with or without application by a party if:

a. _____Judge is a party or is interested in the action

b._____Judge's testimony is immaterial to action;

c. _____Judge is related to the party

D._____Judge has been counsel for a party in subject matter unrelated to the instant controversy.

2-1001(a)(2) - As a Matter of Right:

True or False:

a._____Each side is entitled to a one-time absolute right to a substitution of judge, without the need for showing cause.

b._____An oral or written motion for substitution must be presented before the trial or hearing begins and before a ruling on a substantial issue in the case, or presented by consent of the parties.

c. ____If all of these requirements are met, then the trial court has no discretion to deny a motion for substitution of judge even if it shown that the motion was made solely to delay or avoid trial.

*d.*____When a new party files an appearance and a motion for substitution of judge as matter of right, the judge must transfer the entire case.

e.____If a party is not in default and has not entered an appearance, a motion for substitution of judge by that party may be granted, even if there has been a prior ruling on a substantial issue.

2-1001(a)(3) - Substitutions for Cause

True or False:

a.____ The petition must be in writing and set forth the specific cause for substitution and pray for a substitution of judge.

b.____The petition does not need to be verified.

c._____Hearing to determine whether cause exists must occur as soon as possible.

d.____The hearing shall be conducted by the chief judge or his or her designate.

e.____The judge named in the petition may determine whether the petition is deficient on its face, that is, there is no factual basis or no affidavit.

f._____The judge named in the petition need not testify, but may submit an affidavit.

g._____If the petition is granted, the case is reassigned to the judge hearing the petition. If the petition is denied, the judge named in petition hears the case.

2-1001(d) - Substitutions in Contempt Proceedings:

True or False:

a. _____In a proceeding for contempt arising from an attack on the character or conduct of a judge, occurring outside of open court, where the contempt proceeding is pending before the judge whose character or conduct was impugned, a substitution may be allowed when a party fears that he or she will not receive a fair and impartial trial before that judge.

b. _____The petition must be verified and must be filed before the trial of the contempt proceeding.

Criminal 725 ILCS 5/114-5(a) - Matter of right

Check all that apply:

a. ____ Written motion.

b. ____ Alleging trial judge is so prejudiced against defendant he or she cannot receive fair trial

c. ____ Must be made within 10 days after placed on trial call of judge who is subject of the motion

d. ____ Must name only one judge unless defendant is charged with Class X felony or murder. If Class X, defendant may name 2 judges as prejudiced but must name them in a single motion

e. ____ Although not stated explicitly in the statute, motion must be made before any substantive ruling.

735 ILCS 5/114-5(d) - Substitutions for Cause

True or False:

1____ Any time before substantive ruling in cause, unless the alleged cause arises after a substantive ruling.

2. ____Substantive ruling in initial trial does not, by itself, bar a cause motion on remand.

3.____Motion need not be supported by affidavit.

4.____ Judge named in motion must testify.

5.____ Must be heard by different judge unless it is untimely or fails to establish threshold basis for substitution.

6._____ Wrongful denial of motion renders some actions, but not all, void.

7._____Judicial rulings alone almost never constitute a valid basis for a bias motion.

8. _____Alleged bias must be shown to stem from an extra-judicial source which results in opinion on merits on some basis other than what judge learned from participation in the case.

9._____ Non-specific motion without affidavit attached cannot be denied outright, all motions must be transferred to another judge.

(Hypotheticals derived from handout from American Judicature Society's 22nd National College on Judicial Conduct and Ethics, October 2011)

On a scale: 4 (disqualify)
3 (maybe disqualify)
2 (maybe not disqualify)
1 (no need to disqualify)

What should Judge Cook do in a case in which Lee Lawyer is representing one of the parties?

a) Judge and Lee Lawyer attended same law school.

b) Judge and Lee Lawyer attended same law school class.

c) Judge and Lee Lawyer practiced together over 10 years ago.

d) Whenever Lee Lawyer is in the courthouse, she stops by the judge's chambers to say hello.

e) Judge attends Lee Lawyer's law firm holiday open house every year.

f) Judge and Lee Lawyer dated several times a couple of years ago.

g) Judge and Lee Lawyer lived together for about five years during and just after law school; relationship ended amiably 15 years ago.

h) Judge and Lee Lawyer recently appeared on a bar association panel together.

i) Judge and Lee Lawyer currently serve on a bar association committee to revise discovery rules.

j) At a bar association fund-raiser, judge and Lee Lawyer sat at the same table with 10 other people.

k) At recent bar association fund-raiser, judge sat at a table paid for by Lee Lawyer's law firm.

l) At the annual bar association fund-raiser, judge and Lee Lawyer are part of a golf foursome.

m) Judge and Lee Lawyer serve together on the board of the legal aid society.

n) Judge and Lee Lawyer serve together on the board of the local library.

o) Judge and Lee Lawyer are part of a book club that meets monthly.

p) Judge and Lee Lawyer co-own a boat and take alternative weekends on it.

q) Judge and Lee Lawyer live on the same block.

r) Lee Lawyer's family hosts a neighborhood barbeque every summer at their home, which judge and family attend with five other families.

s) Judge's kids and Lee Lawyer's kids attend the same school.

t) Judge and Lee Lawyer lunch together with two or three other attorney about once a year/ six- times a year/ Monthly/ Weekly.

u) Judge and Lee Lawyer lunch alone together about once a year/ six-times a year/ Monthly/ Weekly.

v) Lee Lawyer appears before the judge almost every week.

w) Judge has appointed Lee Lawyer as pro bono counsel about once a year.

x) Lee Lawyer was the trustee for the estate of the judge's late father, which wound up last year.

y) Judge and family and Lee Lawyer and family vacationed together when they practiced together but have not done so for the last 10 years/ every year.

z) Judge and family have dinner with Lee Lawyer and family at each others' homes, with no one else present, once a year/ quarterly/ once a month.

aa) Judge's daughter and Lee Lawyer's daughter are best friends and frequently have sleepovers with other girls at each other's home.

bb) Judge and Lee Lawyer are friends on Facebook.

PERIODIC RESPONSIBILITIES TO THE COURT
OF THE

GUARDIAN OF THE ESTATE OF A DISABLED ADULT

This handout is intended to summarize many of the guardian of the estate's periodic responsibilities to the court. The guardian is advised to consult with his or her attorney or with the Illinois Probate Act, especially 755 ILCS 5/11a-1 through 5/11a-23, for a more complete explanation of the guardian of the estate's duties in the administration of the personal estate and real estate of the disabled adult.

Immediately after being appointed as guardian of the estate of the disabled adult:

File you *oath of office* [or your *affirmation*] with the Circuit Clerk.

File your guardian's *bond*. The law provides that it is to be an amount not less than double the value of the personal estate if individuals act as sureties or not less than 1½ times the value of the personal estate if a surety company acts as surety.

It is usually appropriate and necessary to set up a checking account for the disabled adult's estate. A guardian of the estate should never commingle the disabled adult's funds with the guardian's own personal funds.

Note: after you have filed your oath of office and the court has approved your bond, your *letters of office* will issue to you. Always keep the court informed of your current address.

Within 60 days of the issuance of your letters as guardian of the estate of the disabled adult:

File a verified *inventory* of the real and personal estate of the disabled adult, including any cause of action on which the disabled adult has a right to sue. The real estate description should include any improvements and encumbrances (like a mortgage).

If any real or personal estate comes to your knowledge at any time after you have filed the inventory, file a supplemental inventory.

Within 13 months of the issuance of your letters as guardian of the estate of the disabled adult:

File a verified *account*. (If you are also the guardian of the person of the disabled adult, this also is probably the time to file your guardian's *report*. See the handout for *Guardian of the Person* for details on making that report.

An account states the receipts and disbursements of the estate since the date the letters issued or since any prior account was filed. The account also lists all real and personal estate which is on hand. *Proof of disbursements* from the estate is required. Usually this consists of bringing to the Circuit Clerk's office all canceled checks. You may be asked to assist the clerk in comparing the checks to the estate account.

A hearing on the account must be set. Get the date from the Circuit Clerk's office. Give notice to all of the same people, including the disabled adult, that were entitled to notice on the original petition for guardianship and add unpaid creditors. Also include the guardian of the person of the disabled adult if that is someone other than you. You were probably required to have an attorney serve as *Guardian-ad-Litem* (or "GAL") at the hearing that established the guardianship. You are not required to have a GAL for the hearing to approve your account, but if you do use a GAL, you may have more protection against later claims against you for fraud or mismanagement. If a GAL is used, the GAL will be paid a fee from the estate.

Within every 1, 2, or 3 years (plus 30 days) after the expiration of the last account:

File another verified *account*. When the first verified account is approved by the court, the court will tell you to file subsequent accounts every 1, 2, or 3 years (plus 30 days). If the court does not do so, either ask the judge for the time period or file them every 3 years. Generally, the bigger and more complicated the estate is, the more likely the court will have you file accounts more often. The procedures are the same for subsequent accounts as they were for the first account, so see the explanation above.

When the estate is closed (as due to death of the disabled adult) or when your letters are revoked (as due to your resignation):

File a *final account*. The procedure is the same as it was for the first account, so see above.

PERIODIC RESPONSIBILITIES TO THE COURT
OF THE

GUARDIAN OF THE PERSON OF A DISABLED ADULT

This hand out is intended to summarize many of the personal guardian's periodic responsibilities to the court. The guardian is advised to consult with his or her attorney or with the Illinois Probate Act, especially 755 ILCS 5/11a-23, for a more complete explanation of the guardian of the person's duties. This handout does not describe the duties of the personal guardian to the disabled adult; the duties explained here are owed to the court.

Immediately after being appointed a guardian of the person:

File your *oath of office* [or your *affirmation*] with the Circuit Clerk.

File your guardian's *bond* if it has been ordered by the court. The law provides that the court may waive the filing of a bond for the guardian of the person of a disabled adult. If the court does not waive the filing of a bond, the court will tell you in what amount the bond is to be.

Note: after you have filed your oath of office and the court has approved any bond, your *letters of office* will issue to you. Always keep the court informed of your current address.

Within 13 months of the issuance of your letters as guardian of the person:

File a guardian's *report*. (If you are also the guardian of the estate of the disabled adult, this is also the time to file your guardian's *account*. See the handout for *Guardian of the Estate of a Disabled Adult* for details on making that account.)

The report shall state **briefly** the following:

1. The current mental, physical, and social condition of the disabled person;
2. The present living arrangement, and a description and the address of every residence where the disabled person has lived during the reporting period and the length of stay at each place;
3. A summary of the medical, educational, vocational, and other professional services given to the disabled adult;
4. A resume or summary of the guardian's visits with and activities on behalf of the disabled adult;
5. A recommendation as to the need for continued guardianship, and
6. Any other information requested by the court or useful in your opinion.

In the rare instance that the disabled adult has minor or dependent adult children that you, the personal guardian, have taken custody of, then you must include those children in the report for paragraphs 1 through 4 above.

The report is to be brief. It should be typed or very neatly written. Include the file number on the top of the report if you know it. Put your address and day time telephone number on the report. File it with the Circuit Clerk's office. Unlike an estate guardian's *account* that is mailed to others and set for hearing, the personal guardian's *report* is not normally mailed to others nor is it set for hearing. The judge will simply review it and let you know if anything more is required of you.

Within 1, 2, or 3 years (plus 30 days) after the previous report was filed:

File another guardian's report 3 years after the prior one unless the court has ordered you to file your personal guardian reports more often. If there is also an estate guardian for the disabled adult, the judge will usually have you file your reports at the same time the estate guardian is to file accounts.

If the disabled adult dies:

File a copy of the death certificate if the disabled adult should die. You will be discharged as guardian of the person and if there was a bond, it will be canceled.

Judge John Coady

PERIODIC RESPONSIBILITIES TO THE COURT OF THE GUARDIAN OF THE ESTATE OF A MINOR

This handout is intended to summarize many of the estate guardian's periodic responsibilities to the court. The guardian is advised to consult with his or her attorney or with the Illinois Probate Act, especially 755 ILCS 5/11-1 through 5/11-18, for a more complete explanation of the guardian of the estate's duties in the administration of the personal estate and real estate of the minor.

Immediately after being appointed as guardian of the estate of the minor:

File you *oath of office* [or your *affirmation*] with the Circuit Clerk.

File your *guardian's bond.* The law provides that it is to be an amount not less than double the value of the personal estate if individuals act as sureties or not less than 1½ times the value of the personal estate if a surety company acts as surety.

For many cases, it is appropriate to set up a checking account for the minor's estate. A guardian of the estate should never commingle the minor's funds with the guardian's own personal funds.

Note: after you have filed your oath of office and the court has approved your bond, your *letters of office* will issue to you. Always keep the court informed of your current address.

Within 60 days of the issuance of your letters as guardian of the estate of the minor:

File a verified *inventory* of the real and personal estate of the minor, including any cause of action on which the minor has a right to sue. The real estate description should include any improvements and encumbrances (like a mortgage).

If any real or personal estate comes to your knowledge at any time after you have filed the inventory, file a supplemental inventory.

Within 13 months of the issuance of your letters as guardian of the estate of the minor:

File a verified *account.*

An account states the receipts and disbursements of the estate since the date the letters issued or since any prior account was filed. The account also lists all real and personal estate which is on hand. *Proof of disbursements* from the estate is required. Usually this consists of bringing to the Circuit Clerk's office all canceled checks. You may be asked to assist the clerk in comparing the checks to the estate account.

A hearing on the account must be set. Get the date from the Circuit Clerk's office. Give notice to all of the same people, including the minor, that were entitled to notice on the original petition for guardianship and add unpaid creditors. Also include the guardian of the person of the minor if that is someone other than you. You were probably required to have an attorney serve as *Guardian-ad-Litem* (or "GAL") at the hearing that established the guardianship. You are not required to have a GAL for the hearing to approve your account, but if you do use a GAL, you may have more protection against later claims against you for fraud or mismanagement. If a GAL is used, the GAL will be paid a fee from the estate.

Within every 1, 2, or 3 years (plus 30 days) after the expiration of the last account:

File another verified *account.* When the first verified account is approved by the court, the court will tell you to file subsequent accounts every 1, 2, or 3 years (plus 30 days). If the court does not do so, either ask the judge for the time period or file them every 3 years. Generally, the bigger and more complicated the estate is, the more likely the court will have you file accounts more often. The procedures are the same for subsequent accounts as they were for the first account, so see the explanation above.

When the minor reaches the age of 18:

File a *final account.* The procedures are generally the same as they were for the prior accounts, so see above. But notice of the hearing on this account is usually required to issue only to the minor (now an adult) and to any unpaid creditors. Also, the minor (now an adult) may file a written consent to the court excusing the filing of a final account if there are no unpaid creditors. If the final account is approved or excused by the court, the estate will be closed, you will be discharged as guardian of the person of the minor, and your bond will be canceled.

Special provision if the estate consists only of money and it will be held on deposit until the minor turns 18:

If the minor's estate consists only of money and your intent, as guardian, is to hold the money on deposit until the minor turns 18, the law authorizes the court to excuse you from further duty and release you from your bond. The money must be deposited in a qualifying financial institution and be payable to the minor upon age 18. The court file will be closed.

If you later determine that a need has arisen for the expenditure of the money for the minor before the minor reaches the age of 18, you may petition the court to withdraw all or a part of the money on deposit.

JUDICIAL REMARKS TO A CIVIL JURY

Good morning, Ladies and Gentlemen. My name is _____. I will be presiding over the trial that is set today.

Assisting me during the trial will be:

_____County [Deputy] Circuit Clerk _____

Official Court Reporter _____

_____County Court Bailiffs _____

_____

Sheriff's Deputy/Sheriff's Security Officer _____

You have been called here today to sit as jurors in the case of:

_____

_____

_____

Representing _____

is/are Attorney(s) _____

Representing _____

is/are Attorney(s) _____

Representing _____

is/are Attorney(s) _____

Representing _____

is/are Attorney(s) _____

I have some introductory remarks to give to you about this case, court procedure, and some basic principles of civil law. These are not your final and complete instructions. Those will come at the end of the case, after you have heard the evidence and the arguments of the attorneys.

This is a **civil** action, as opposed to a criminal proceeding. It is a civil action in which
-money is being sought as damages **OR [describe the civil action very succinctly]**

_____.

As you all probably already know, the party that brings a lawsuit in court is known as the *plaintiff*, and the party against whom a lawsuit is brought is known as the *defendant*. [When a defendant also asks for money damages, the defendant is then also called the *counter-plaintiff* and the plaintiff is then also called the *counter-defendant*.]

A *Statement of the Case* has been prepared to be read to you. This statement is not evidence. It is intended to generally inform you of the nature of this case called for trial today.

The *Statement of the Case* reads as follows: **READ STATEMENT OF CASE**

A number of you are about to be called to the jury box to be asked questions by me and then the attorneys. Please do not feel that anyone is trying to needlessly pry into your personal affairs. It is just our way of learning something about you in this jury selection process. And if we ever ask you any question that you would prefer to answer in the court's chambers, please do not hesitate to ask us to do so. The attorneys, parties, [court reporter], and myself will take you to my office where you may answer with a little more privacy than we have here in the courtroom.

It is your duty to answer truthfully the questions of the court and counsel. After asking a group of you questions, the attorneys, parties, [court reporter], and myself will meet in chambers to work through the jury selection process. The law allows each side to excuse a certain number of prospective jurors during the course of jury selection. If you are not chosen to serve on this or any other jury, please do not concern yourself with the reasons why you were not selected. Prospective jurors who are excused have just as much fulfilled their obligation as those jurors who are selected to sit through the trial.

The attorneys tell me that they expect this trial to last approximately ____ day[s]. We recognize that service on a jury may result in some inconvenience to you. We realize that we have taken you away from your homes, your families, your jobs, and your personal affairs. If service for this trial is an impossibility for you, I want you to let me know. However, I hope you understand that service on this jury or any other jury, if you qualify as a juror, is not only an obligation but also a privilege that you enjoy as a citizen of this country. Your participation in this process is essential to our system of justice and is greatly appreciated.

Is there any among you that jury service is an impossibility for this trial?

[To the clerk:] Have the jurors been sworn? Please call _____ jurors to the jury box.

Jury Questions

Know the attorneys
Know the plaintiff or the defendant
Read or heard anything about the case
Know the witnesses

Have you or anyone close to you been a plaintiff in a law suit?
Have you or anyone close to you been a defendant in a law suit?

Ever serve as a juror on a coroner's jury, on a grand jury, or on a petit jury? **[If yes, explain difference.]**

Is there anything about you, your background, or your experiences that you think the attorneys or the parties might want to know about you?

Will you apply the law as the court states it to be, without regard to your own personal feelings about the law?

Do you know of any reason why you cannot be a fair and impartial juror?

Outline of Possible Topics to Explain to Civil Jurors After Selection
[detailed explanation follows, if needed]

Order of trial

- opening statements
- what evidence is
- you are judges of the facts, you judge the credibility of witnesses
- the judge is the judge of the law…
- if you can't hear…
- objections
- sidebars
- jury instruction conference
- closing arguments
- jury instructions

Keep open minds – wait until after closing arguments before decision making…
Time court begins and ends, breaks
When returning to court, don't linger in the lobby or in the courtroom, go to the jury room so you don't accidentally overhear witnesses and others discussing the case
Don't discuss the case with family, friends, or anyone and not with other jurors until deliberations begin
Don't allow yourselves to be exposed to anything (TV, radio, newspapers, magazines, internet) that has to do with the issues in this case
Report any attempts by anyone to discuss the case with you
Don't go to the scene of the alleged incident **(if the attorneys request the court to so order)**
Encountering parties or the attorneys in the elevator, at lunch, etc. – no appearance of impropriety…
Drinks into the jury box is or is not OK
Assigned seats in the jury box … Jurors buttons or tags to be worn
Responsibility of alternate jurors and treatment of them is no different than any other juror
Where to park and what to do if you get a parking ticket
No cellular telephones during actual jury deliberations
Notes **[read the notes instruction]**
SWORN IN?

Detailed Explanation to Civil Jurors After Selection
[assumes money damages are sought]
[Consider not reading this verbatim, and, instead, using your own words following the outline above.]

The[A] plaintiff has a right to file this lawsuit. The[A] defendant has a right to defend it. The parties have a right to have a jury decide the issues. The fact that a lawsuit has been filed does not automatically mean that a plaintiff is entitled to recover money damages. Likewise, the fact that a defendant denies liability does not automatically mean a plaintiff is unable to recover money damages.

A plaintiff must prove a defendant is liable, that is, legally responsible, under the evidence and the law. If a plaintiff does prove a defendant is liable, then you would consider the question of money damages [as to that defendant]. A plaintiff would then be legally entitled to recover money damages if the evidence supports an award of damages, that is, an amount that would reasonably and fairly compensate a plaintiff for injuries [or loss].

If a plaintiff [or counter-plaintiff] does not prove a defendant [or counter-defendant] is liable, then you will have no reason to consider the question of money damages [as to that party]

The trial will begin with "opening statements". That is an opportunity for the attorneys to tell you what they believe the evidence is going to be in the case. It is not a time for making arguments to you, the jury. It is just the chance for the attorneys to familiarize you with what they believe the facts are going to be as the trial proceeds.

The evidence at a trial consists primarily of the witnesses' testimony from the witness stand and physical objects or items that we call *exhibits*. It is from the witnesses' testimony and the exhibits you are to decide the facts of the case.

It has been said that in a jury trial the jurors are the judges of the facts and the judge is the judge of the law. It is your job, as the jurors, to decide the facts of the case. In that connection, you are to judge the credibility of the witnesses. That means you are to judge the witnesses' believability and to also decide the weight to give to the witnesses' testimony. It is, then, absolutely crucial that you hear what the witnesses have to say. If there is ever a time that you cannot hear a witness, please raise your hand or just speak out and let us know that you cannot hear. As the judge, it is my duty to tell you what evidence you may consider and, at the end of the case, to instruct you as to the law that is applicable to this case.

The plaintiff[s] will present evidence first; then, the defendant[s] may present evidence. After either side has rested in the presentation of evidence, the other side always has an opportunity to present rebuttal evidence. Rebuttal evidence is usually presented in much shorter time than the evidence presented in the case-in-chief.

During the presentation of evidence and at other times during the trial, you may hear the attorneys make objections. Do not hold that against the attorneys. It is their duty to make appropriate objections. The idea of objections is make sure that only the material and relevant evidence is presented to you, and that the immaterial and irrelevant evidence is kept out of the trial.

When I sustain an objection to a question, you will hear me say something to the effect, "Sustained or the objection is sustained." That means that I agree with the objector. You should disregard the question, and if an answer was already given, you may hear me instruct you to disregard the answer.

When I overrule an objection to a question, you will hear me say something to the effect, "Overruled or the objection is overruled." That means that I disagree with the objector. You may consider the question and the answer, but you should not give the answer any more weight than you would have given it if no objection had been made at all.

From time-to-time, there will be conferences between the attorneys and me that are outside your earshot. Sometimes those conferences will be at a side bar here in the courtroom. Sometimes those

conferences will be in my chambers. If the conferences are expected to take any significant length of time, you will be allowed to return to the jury room for your comfort. Please do not get frustrated with those conferences. They, too, are necessary to ensure that only the material and relevant evidence are presented in this trial.

During this trial, you may be permitted to ask questions of witnesses, but you must follow the procedures that I describe: If you have a question for a witness and you believe the answer would be helpful to you in understanding the case, then after the lawyers have completed their questions, but before that witness is excused, I will give you a chance to submit your question in writing. I will have you write your question on a piece of paper and hand it to the bailiff. *[The court may now describe specific procedures to be used.]* You should not write your name or juror number with the question. Also, you should not discuss your questions with your fellow jurors at this time. You may submit one or more questions or no question at all. It is up to you. Please keep in mind, though, that you should only ask a question if you think it is important to your ability to decide the issues in this case fairly. You should be sure you are asking a question and not making a comment. You should not use your questions to argue with a witness or to express opinions about a witness's testimony. Your role is to be an impartial fact-finder. The purpose of your question should be to clarify testimony that you have not understood or that has failed to address a factual question that you believe is important. After the bailiff has collected the pieces of paper and given them to me, I will decide whether the law allows the question to be asked of the witness. Not all questions can be asked or asked using the wording that was submitted. The rules of evidence might not permit me to ask your question. You shall not concern yourself with the reason for the exclusion or modification of any question submitted. If I cannot ask your question or if I rephrase it, please do not be offended and do not let it affect your judgment of the evidence or the witness in any way. If the question is allowed, I will ask the question of the witness and the attorneys may then ask some follow-up questions. Please do not speak directly to me, the lawyers, or the witnesses.

After all of the evidence is completed, the attorneys and I will work on the jury instructions. These are the instructions as to the law applicable to the case. You, the jury, will decide the facts of the case and apply the instructions of law that I give you to those facts, and in this way decide the case.

After the jury instruction conference is completed, we will all gather back in the courtroom for closing arguments. In closing arguments, the attorneys may review with you what they believe the evidence has been. But they may go farther. They may ask you to draw inferences from the evidence. They may argue to you about the case, they may try to persuade you, and try to convince you of their particular side.

After the closing arguments are completed, I will read the jury instructions to you. It is your absolute duty to accept the law as defined in the instructions and to follow the law. You are not allowed to change the law because it is not as you expected it to be or because it is not as you think it ought to be. Your oath requires you to follow my instructions as to the law just as I give them.

I will send in one packet of those jury instructions into the jury room with you, perhaps along with some exhibits. You may then deliberate your verdict.

I ask that you keep open minds and not be making any decisions or drawing any conclusions not only until after the evidence is completed but until after you have had the benefit of the attorneys' closing arguments.

Generally, court begins in the morning at 9:00 a.m. and concludes usually at some point between 4:00 and 5:00 p.m. There is at least a one hour break for lunch. You are on your own during lunch hour. There is always one break in the morning and one in the afternoon, but because of legal matters in the trial that the attorneys and I will have to attend to, you jurors may have more breaks.

When you return to the courthouse after lunch or at the beginning of a new day, please come directly into the jury room. We don't want you lingering in the lobby or hall area because there is always a chance that various people may be there discussing the case, not realizing that you are jurors.

Don't talk to anyone about the case until after the case is over. This includes your family and friends, and it even includes your fellow jurors. You cannot talk to fellow jurors about the case until the jury deliberations begin after the evidence and arguments have been completed. Don't let yourself be exposed to anything, such as television shows, newspapers, new broadcasts, Internet, or people's conversations that have anything to do with this case. If this should happen, it is your duty to report it to me. You will not automatically be excused from jury service, but you will be examined to insure that your ability to serve impartially has not been compromised.

If you should encounter the attorneys or the parties in the hallway, on the elevator, or at a restaurant at lunch, you are allowed only to exchange a short greeting, such as "hello". This is to avoid not only an impropriety but also to avoid even the appearance of an impropriety.

[For this particular case, we are asking that you not go to the alleged scene of the incident in question. That is because all of us, jurors, attorneys, parties, and judge, are to have the benefit of the same evidence, and it is not appropriate for some of you to see the location during the trial but not all of us.]

For this next item that I want to tell you about, please know that different judges have different rules. I allow jurors to bring drinks into the jury box. I believe a drink helps some people to stay alert and attentive. I do ask that you put your coffee, soda, or other beverage into a plain cup. In particular, do not bring into the jury box any cups or cans that advertise products. I believe the bailiffs have plain cups for you in the jury room. And please be careful not to place those drinks in a place they could be easily spilled.

The seats that you are now seated in are your assigned seats throughout the trial. Whenever you return to the courtroom, always return to that particular seat. [You have been given jurors' badges/buttons. You should wear them whenever you are at the courthouse because it allows court and security personnel to readily identify you as a juror.]

It is apparent that ___ jurors have been selected. Only 12 jurors will deliberate. The additional jurors are alternate jurors, who will be called upon if any of the 12 jurors are unable to complete their service. We do not have 2 classes of jurors – the 12 jurors in an elevated status and the alternates in some lesser status. All of you are considered as the jurors in the case, without any distinction. Court personnel will treat you that way and you should treat one another that way.

While you may have cellular telephones in the jury room during the evidentiary portion of the trial, telephones in the jury room are prohibited once the deliberations begin.

Finally, on parking for jurors [and parking tickets]... **[Either explain yourself if you know or have the circuit clerk explain.]**

NOTES

[It is probably advisable to read this verbatim rather than paraphrasing it in your own words.]

You are instructed that any juror has the right to take and use written notes. Note pads and pens will be provided for your convenience. Please place [your name/juror number] on the envelope that contains the pad and pen. No one will be allowed to look at your notes at any time.

Those of you who take notes during trial may use your notes to refresh your memory during jury deliberations.

Each juror should rely on his or her recollection of the evidence. Just because a juror has taken notes does not necessarily mean that his or her recollection of the evidence is any better or more accurate than the recollection of a juror who did not take notes.

When you are discharged from further service in this case, your notes will be collected by the [deputy/bailiff] and destroyed. Throughout that process, your notes will remain confidential and no one will be allowed to see them.

The bailiffs shall distribute the note pads and pens to the jurors who wish to take notes.

[Have the jurors been sworn?]

Rule To Show Cause (Indirect Civil Contempt) Overview
For The Judge of The Circuit Court of Illinois

1. **Concept:** All rules to show cause (RTSC) are indirect civil contempt actions, even if filed in a criminal case. This means, among other things, that the intent is not to punish for past wrongdoing but, instead, to coerce compliance with an existing court order.

2. **Verified petition** for RTSC is to be filed. Standard for issuance: *prima facie* evidence. Either enter RTSC on verified petition or set the petition for rule for hearing with notice. When rule issues, it must be in writing.

3. **Service of RTSC** by notice or warrant (or hand it to the Respondent in open court).
   a) Personal service of rule is not necessary, but can be ordered in the court's discretion. U.S. mail is sufficient.
   b) Bond may be set and/or a warrant (or body attachment) may issue (10% bond). Standards: failed to appear per notice or facts presented showing will not respond to notice, will flee jurisdiction, or will conceal self.

4. **Upon appearance**:
   - **Confirm Respondent has copy of RTSC and explain RTSC.**
   - **Explain procedure**: "At the hearing, you must go forward and prove by a preponderance of the evidence that you are not in contempt of court." [*Optional if RTSC for FTP*:] "Your inability to pay may be a defense."
   - **Explain rights.** "You have the right:
     - To defend.
     - To be heard.
     - To present evidence.
     - To subpoena witnesses.
     - To testify, but there is no right to remain silent.
     - To cross-examine witnesses called against you.
     - To hire an attorney but not to be given a court appointed attorney. [*majority rule*]
     - [*If the Respondent was just handed the RTSC*] To have time to prepare for the hearing."
   - **Explain potential sentence**, such as: "If you fail to prove that you are not in contempt, the court may sanction you with indefinite penalties, such as jail or fines, until you correct or cure the contempt."
   - **Ask if hiring an attorney.** If "yes," set hearing. If "no," continue on.
   - **Ask if admitting or denying the RTSC.** If admits, sentencing arguments are permissible, allow allocution, and then impose sentence. If denies, set hearing or hold hearing instanter.
   - **Explain bond** if the Respondent is being held on bond and the hearing is not proceeding instanter. Set a prompt hearing.

5. **At trial,** the burden is upon the Respondent to show any defense by a preponderance of the evidence. Defenses include Respondent did not have the ability to comply with the order or Respondent does not now have the ability to comply with the order. Failure to pay must be wilful. The opposing side may present rebuttal evidence.

6. **Sentencing:** If the Respondent fails to "show cause", sentencing arguments are permissible, allow allocution and impose sanctions (i.e. the purge order). Sanctions, including jail, are to be indeterminate, but consider having Respondent brought from jail for periodic status hearings so that Respondent is not "forgotten" in jail. Purge order must be in writing and given to Respondent.

7. **Administration of the purge order:** If jail is imposed, make sure that a system is in place for the jailer to be immediately informed if purge has occurred and that the jailer knows to release the Respondent upon a purge.

8. **If the purge order is ignored:** If jail is imposed as a sanction and the Respondent neither purges the contempt (as by payment) nor reports to jail, these options:
   a) Issue a warrant (or body attachment) to have Respondent brought to court to be ordered to begin sentence.
   b) Indirect criminal contempt (in a "CC" file) may be filed and a warrant may issue, as for any criminal contempt case.

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

_____, Plaintiff,	)	
vs.	)	NO. _____
_____, Defendant(s).	)	

ORDER

THIS CAUSE having come before the Court, and the parties having appeared and announced an agreement for entry of judgment and the payment of the same. The Court, being fully advised in the premises, finds as follows:

1. Plaintiff and Defendant agree that judgment may enter in favor of Plaintiff and against Defendant in the amount of $_____ plus court costs.

2. Plaintiff and Defendant agree that the amounts owed by Defendant as set forth in the preceding paragraph may be paid in monthly installments of $_____ until such sums are paid in full.

3. Defendant has filed herein a completed Income, Asset and Exemptions Form.

4. Based on the foregoing, the Court finds that Defendant has not asserted any exemptions and that the installment payments to be made by Defendant will be made from non-exempt sources.

IT IS THEREFORE ORDERED AND ADJUDGED that Judgment is entered in favor of the Plaintiff and against the Defendant for the amounts set forth in paragraph 1 above, that the installment agreement set forth in paragraph 2 above is approved and that this Court retains jurisdiction over the parties hereto and the subject matter hereof for the purpose of enforcing this order.

ENTERED: _____

_____
JUDGE

MASS ARRAIGNMENT

(meaning to a group of defendants rather than to just one)

A "mass" arraignment is an explanation of rights to a courtroom of defendants charged with various criminal or traffic offenses. A mass arraignment explains rights only. An actual arraignment for an individual defendant also includes explanation of the charges and potential penalties, as well.

*If a **felony case** is called for arraignment and if the plea is to be "not guilty," either obtain a waiver of arraignment or individually arraign the defendant. If the plea is to be "guilty" in a felony case, **individually** arraign the defendant. Do not rely on a mass arraignment or accept a waiver of arraignment when the defendant is pleading guilty to a felony.* [Note: recent case law says misdemeanors, too.]

Good Morning. My name is _____.

If you are an individual charged with an offense, you have the following rights:

- You have the right to plead not guilty and the right to persist in that plea of not guilty.
- You have the right to a trial by a judge or a jury, and the type of trial is your choice. A trial is a proceeding in court in which the State will present evidence against you.
- You have the right to have the State prove the case beyond a reasonable doubt.
- You have the right to a presumption of innocence on the charges against you.
- You have the right to confront and cross-examine your accusers.
- You have the right against self-incrimination, which means you are not required to testify at your trial and your silence cannot be used against you.

- While you have no burden to present a defense, you have the right to present a defense.
- You have the right to present evidence at your trial.
- You have the right to subpoena witnesses to testify in your behalf.
- You have the right to testify at your trial if you wish.
- You have the right to a speedy trial [**optional:** which is within 160 days from the date you request a speedy trial in writing in the court file or, if you are in custody, then within 120 days of the date you were taken into custody].

- You have the right to hire an attorney of your own choosing. If you cannot afford an attorney [and if there is a chance that you could be sentenced to jail], you have the right to a court appointed attorney or public defender. You also have the right to proceed without an attorney.

- If you are not a citizen of the United States, you are hereby advised that conviction of an offense may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States.

When I call your case, please step forward.

Optional: If you are here with a family member whose case is called and that person is not in custody, you may step up with the family member to hear what is said.

Note: An **individual** arraignment consists of an explanation of the charges, possible penalties, the above rights, and the entry of a plea of "guilty" or "not guilty." If a "not guilty plea," then the court inquires as to whether the defendant wishes trial by judge or jury.

PROCEDURE ON A NEGOTIATED FELONY GUILTY PLEA

Optional questions in the sense that some judges ask these and some do not:

Do you read and understand the English language? *Obtain an interpreter, if necessary.*

Are you having any medical or emotional problems that interfere with your ability to understand these proceedings and to take part in them? *If "yes," determine if the defendant is fit to proceed, meaning understands the nature and purpose of the proceedings and able to assist in the defense.*

Are you taking any medications, now or in the last 30 days? *If the defendant answers "yes," inquire as to whether the drugs are psychotropic. If so, ask questions that enable you to determine if the defendant is able to understand the nature and purpose of the proceedings against him or her and is able to assist in his or her defense. If a "bona fide" doubt as to fitness arises, you must order a fitness exam. But a defendant shall not be presumed to be unfit solely by virtue of the receipt of psychotropic drugs or medications.*

Is the victim or family members of the victim present in the courtroom?

Please state the terms of the negotiated plea. *The plea needs to be stated with specificity. Details are to include the charges the pleas are to, the sentences including any mandatory supervised release, credit for time served, monetary terms, the counts to be dismissed, and any promises given for the plea.* [*Sex offender evaluation needed?*]

To the defendant's attorney: **Counsel, was the plea stated correctly?**
To the defendant: **Is this your understanding of the negotiated plea?**

Optional to the prosecutor: **Has the victim/law enforcement been notified of the terms of the plea? Did the victim/law enforcement express a reaction to the plea?**

What is the Defendant's criminal record?

Ask for any further information you need in order to decide if you wish to accept or reject the plea.
The Court is willing to accept the negotiated plea.

Read the charges. **Do you understand what the State of Illinois has accused you of?** *Explain, if necessary.*

Explain possible penalties, including DOC, Mandatory Supervised Release, fines, and the possibility of restitution (if applicable.) Be very specific about any special sentencing provisions, including special fines and assessments, the possibility of extended term, consecutive sentences or mandatory sentencing provisions, and MSR. Perhaps say if a charge is or is not potentially probationable. **Do you understand the possible penalties?**

Explain the actual penalties with all the details. **Do you understand the actual penalties?**

Optional if probation, conditional discharge, or periodic imprisonment is to be imposed: **Do you understand that if you violate the terms of your probation, conditional discharge, or periodic imprisonment sentence, the sentence may be revoked and you may be resentenced within the guidelines I have already stated?**

If the defendant is "pro se" and has not already waived an attorney: **You have the right to hire an attorney of your own choosing. If you cannot afford an attorney, you have the right to a court appointed attorney. You also have the right to proceed without an attorney. Do you wish to hire an attorney or to ask for a court appointed attorney?**

I find that the defendant has knowingly waived the right to be represented by an attorney.

If the defendant is "pro se" and assuming that there was a prior waiver of an attorney: I remind you that you have the right to hire an attorney of your own choosing. If you cannot afford an attorney, you have the right to a court appointed attorney. You also have the right to proceed without an attorney. Do you continue to waive your right to be represented by an attorney?

In a felony, a preliminary hearing waiver is necessary if there has been no preliminary hearing or grand jury indictment.

If you plead guilty, you are giving up the following rights:

- **You have the right to plead not guilty and the right to persist in that plea of not guilty.**
- **You have the right to a trial by a judge or a jury, and the type of trial is your choice. A trial is a proceeding in court in which the State will present evidence against you.**
- **You have the right to have the State prove the case beyond a reasonable doubt.**
- **You have the right to a presumption of innocence on the charges against you.**
- **You have the right to confront and cross-examine your accusers.**
- **You have the right against self-incrimination, which means you are not required to testify at your trial.**

- **While you have no burden to present a defense, you have the right to present a defense.**
- **You have the right to present evidence at your trial.**
- **You have the right to subpoena witnesses in your own defense.**
- **You have the right to testify at your trial if you wish.**
- **You have the right to a speedy trial, which is within 160 days from the date you request a speedy trial in writing in the court file or, if you are in custody, then within 120 days of the date you were taken into custody.**

Do you understand these rights?
Do you understand that if you plead guilty you are giving up these rights and there will be no trial of any kind?

If you are not a citizen of the United States, you are advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States. Do you understand?

Knowing what you are charged with, the possible penalties, the actual penalties, and the rights you are giving up, how do you plead to the charge of _____, a Class ___ felony/misdemeanor?

Please sign the guilty plea(s).

Has anyone threatened you, intimidated you, or forced you in any way to plead guilty against your will?

Have any promises been given to you that I have not been told about today in open court to get you to plead guilty? *One concern here is if the Defendant wants promises for the plea to be subsequently enforced then those promises should be stated into the record.*

I find that the defendant has knowingly and voluntarily pleaded guilty.

To the prosecutor: **Please state a factual basis for the plea of guilty.**

To the defendant's attorney: **Do you have any objection to the factual basis?** *And the same question to the defendant:* **Do you have any objection to the factual basis?** *You may allow additions or changes as long as there remains a factual basis for a plea of guilty.*

Optional: **Are you pleading guilty because you are guilty?** *or* **Did you commit this/these offense(s)?**

I find a factual basis for the plea(s) of guilty.

This is the last chance to change your mind about your plea(s) of guilty. Have you thought through thoroughly what you are doing here? Did you discuss it with your attorney? Did you discuss your guilty plea(s) with any family member or friend? Do you wish to stand by your guilty plea(s)?

Optional: **Are you satisfied with the services of your attorney? Have you had sufficient time to meet with and discuss your case with your attorney?**

I find that the defendant persists in the plea(s) of guilty.

The defendant is found guilty of [name the offense(s)]. **Pursuant to the negotiated plea, the defendant is sentenced** *[pronounce the sentence(s)].*

Judgment is entered upon the conviction(s) and upon the sentence(s).

Make the "Expected Time In Custody" statement if sentence is to DOC. This is an abbreviated way of complying. For full compliance, see 730 ILCS 5/5-4-1(c).
Counsel, what is the expected release date of the defendant from the Department of Corrections?

To the defendant: **Do you understand that this expected release date is not a promise but just an estimate?**

Give the Supreme Court Rule 605Right to Appeal Admonishment. **Do you understand that you have a right to appeal and that you must act within 30 days to preserve that right?**

Do you have any questions about anything that we have done here today?

If the defendant protests innocence while pleading guilt, the standard for an "Alford plea" is a strong factual basis for the defendant's guilt and no indication that the plea was a not a product of the defendant's free will.

ONE PAGE PROCEDURE ON A NEGOTIATED FELONY GUILTY PLEA

Optional: preliminary questions re understanding English, medications, and whether victim(s) are present.

Hear the terms of the negotiated plea. Confirm with attorney and the defendant that terms are properly stated. *Reminder: sex offender evaluation may be needed.*

Optional: victim/law enforcement notification and, if any, reaction to the proposed plea.

Receive defendant's criminal history.

Obtain any other information you need to decide whether to accept the plea.

Read the charges.

Explain possible penalties.

Explain the actual penalties with all their details.

If the defendant is "pro se," confirm prior waiver or take a waiver of representation by an attorney.

In a felony, a preliminary hearing waiver is necessary if there has been no preliminary hearing or grand jury indictment.

Explain the rights that are being given up by pleading guilty. SCR 402(a)

Give alien admonition. 725 ILCS 5/113-8

Ask how defendant pleads to each count. Have the guilty plea(s) signed.

Inquire about threats and promises.

Factual basis.

Satisfaction with attorney.

Persistence in plea of guilty.

Pronouncement of guilt and sentence(s).

Give expected time in custody statement for DOC sentences. 730 ILCS 5/5-4-1(c-2)

Give right to appeal. SCR 605

Note:

If the defendant protests innocence while pleading guilty, the standard for an "*Alford* plea" is a strong factual basis for the defendant's guilt and no indication that the plea was a not a product of the defendant's free will.

PROCEDURE ON AN OPEN FELONY GUILTY PLEA

Optional questions in the sense that some judges ask and some do not:

Do you read and understand the English language? *Obtain an interpreter if necessary.*

Are you having any medical or emotional problems that interfere with your ability to understand these proceedings and to take part in them? *If "yes," determine if the defendant is fit to proceed, meaning understands the nature and purpose of the proceedings and able to assist in the defense.*

Are you taking any medications, now or in the last 30 days? *If the defendant answers "yes," inquire as to whether the drugs are psychotropic. If so, ask questions that enable you to determine if the defendant is able to understand the nature and purpose of the proceedings against him or her and is able to assist in his or her defense. If a "bona fide" doubt as to fitness arises, you must order a fitness exam before proceeding. But a defendant shall not be presumed to be unfit solely by virtue of the receipt of psychotropic drugs or medications.*

Read the charges. **Do you understand what the State of Illinois has accused you of?** *Explain, if necessary.*

Explain possible penalties, including DOC, Mandatory Supervised Release, fines, and the possibility of restitution (if applicable.) Be very specific about any special sentencing provisions, including special fines and assessments, the possibility of extended term or consecutive sentences or mandatory sentencing provisions, and MSR length. Perhaps say if a charge is or is not potentially probationable. **Do you understand the possible penalties?**

If the defendant is "pro se" and has not already waived an attorney: **You have the right to hire an attorney of your own choosing. If you cannot afford an attorney, you have the right to a court appointed attorney. You also have the right to proceed without an attorney. Do you wish to hire an attorney or to ask for a court appointed attorney?**

I find that the defendant has knowingly waived the right to be represented by an attorney.

If the defendant is "pro se" and assuming that there was a prior waiver of an attorney: **I remind you that you have the right to hire an attorney of your own choosing. If you cannot afford an attorney, you have the right to a court appointed attorney. You also have the right to proceed without an attorney. Do you continue to waive your right to be represented by an attorney?**

In a felony, a preliminary hearing waiver is necessary if there has been no preliminary hearing or grand jury indictment.

If you plead guilty, you are giving up the following rights:

- **You have the right to plead not guilty and the right to persist in that plea of not guilty.**
- **You have the right to a trial by a judge or a jury, and the type of trial is your choice. A trial is a proceeding in court in which the State will present evidence against you.**
- **You have the right to have the State prove the case beyond a reasonable doubt.**
- **You have the right to a presumption of innocence on the charges against you.**
- **You have the right to confront and cross-examine your accusers.**
- **You have the right against self-incrimination, which means you are not required to testify at your trial.**

- **While you have no burden to present a defense, you have the right to present a defense.**
- **You have the right to present evidence at your trial.**
- **You have the right to subpoena witnesses in your own defense.**
- **You have the right to testify at your trial if you wish.**
- **You have the right to a speedy trial, which is within 160 days from the date you request a speedy trial in writing in the court file or, if you are in custody, then within 120 days of the date you were taken into custody.**

continued...

Do you understand these rights?
Do you understand that if you plead guilty you are giving up these rights?

If you are not a citizen of the United States, you are advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States.

Do you understand that if I accept your plea of guilty, there will not be a trial of any kind, but there will be a hearing to determine the sentence you shall receive for the offenses you are pleading guilty to?

How do you plead to the charge of _____, a Class ___ felony/misdemeanor? *Ask this question individually for each charge.*

Please sign the guilty plea(s).

Has anyone threatened you, intimidated you, or forced you in any way to plead guilty against your will?

Have any promises been given to you that I have not been told about today in open court to get you to plead guilty? *One concern here is if the Defendant wants promises for the plea to be subsequently enforced then those promises should be stated into the record.*

I find that the defendant has knowingly and voluntarily pleaded guilty.

To the prosecutor, **Please state a factual basis for the plea of guilty.**

To the defendant's attorney, **Do you have any objection to the factual basis?** *And the same question to the defendant.* **Do you have any objection to the factual basis?** *You may allow additions or changes as long as there remains a factual basis for a plea of guilty.*

Optional: **Are you pleading guilty because you are guilty?** *or* **Did you commit this/these offense(s)?**

I find a factual basis for the plea(s) of guilty.

This is the last chance to change your mind about your plea(s) of guilty. Have you thought through thoroughly what you are doing here? Did you discuss it with your attorney? Did you discuss your guilty plea(s) with any family member or friend? Do you wish to stand by your guilty plea(s)?

Optional questions: **Are you satisfied with the services of your attorney? Have you had sufficient time to meet with and discuss your case with your attorney?**

I find that the defendant persists in the plea(s) of guilty. The defendant is found guilty of [name the offense(s)].

This Court orders a pre-sentence investigation [*if appropriate:* and a sex offender evaluation]. The defendant is ordered to go immediately to the probation office following this hearing. The sentencing hearing is set for _____. *Felony sentencing hearings are generally set in 4-6 weeks to allow the pre-sentence investigation and sometimes longer (but within 65 days) for a sex offender evaluation.*

Address whether bond continues, is revoked, or is somehow modified.

If the defendant protests innocence while pleading guilty: The standard for an "Alford plea" is a strong factual basis for the defendant's guilt and no indication that the plea was a not a product of the defendant's free will.

You or the State may want sentencing-in-absentia advised: **If you fail to appear for your sentencing hearing, sentencing may proceed in your absence. You will be deemed to have given up all of your sentencing rights that require your presence if you fail to appear. Do you understand what I have said?**

ONE PAGE PROCEDURE ON AN OPEN FELONY GUILTY PLEA

Optional: preliminary questions re understanding English and medications.

Read the charges.

Explain possible sentences

If the defendant is "pro se," take a waiver of attorney or confirm a prior waiver

Is a preliminary hearing waiver necessary?

Explain the rights that are being given up as the result of a plea of guilty. SCR 402(a)

Give alien admonition. 725 ILCS 5/113-8

Explain that upon acceptance of a plea of guilty there will be no trial but there will be a hearing to determine sentence.

Ask how defendant pleads to each count. Have the guilty plea(s) signed.

Inquire about threats and promises.

Factual basis.

Satisfaction with attorney.

Persistence in plea(s) of guilty.

Finding of guilt.

Set the sentencing date.

Order presentence investigation and report, and, if relevant, a sex offender evaluation. Order defendant to report to the probation office.

Address whether bond continues, is revoked, or is somehow modified.

Sentencing in absentia warning, if you or the State want that option. 725 ILCS 5/115-4.1

Note:

If the defendant protests innocence while pleading guilty, the standard for an "*Alford* plea" is a strong factual basis for the defendant's guilt and no indication that the plea was a not a product of the defendant's free will.

SUPREME COURT RULE 605 APPEAL ADMONITIONS

revised as a result of the amendments effective October 1, 2001

AFTER PLEAS OF NOT GUILTY and all PETITIONS TO REVOKE - Supreme Court Rule 605(a)

You have the right to appeal. You have the right to request the clerk to prepare and file a notice of appeal. You have the right, if indigent, to be furnished, without cost to you, with a transcript of the proceedings at the trial or hearing. You have the right, if indigent, to have counsel appointed on appeal.*

The right to appeal the judgment of conviction, excluding the sentence imposed or modified, will be preserved only if a notice of appeal is filed in the trial court within thirty (30) days from the date on which sentence is imposed.

Prior to taking an appeal, if you seek to challenge the correctness of the sentence or any aspect of the sentencing hearing, you must file in the trial court within 30 days of the date on which sentence is imposed a written motion asking to have the trial court reconsider the sentence imposed or consider any challenges to the sentencing hearing, setting forth in the motion all issues or claims of error regarding the sentence imposed or the sentencing hearing.

Any issue or claim of error regarding the sentence imposed or any aspect of the sentencing hearing not raised in the written motion shall be deemed waived.

In order to preserve the right to appeal following the disposition of the motion to reconsider sentence or any challenges regarding the sentencing hearing, you must file a notice of appeal in the trial court within 30 days from the entry of the order disposing of your motion to reconsider sentence or order disposing of any challenges to the sentencing hearing.

*** The right to counsel on appeal is for all felonies, all Class A's, and any other classes where jail is imposed.**

OPEN OR BLIND PLEAS OF GUILTY – Supreme Court Rule 605(b)

You have the right to appeal.

Prior to taking an appeal, you must file in this trial court, within 30 days of the date on which sentence is imposed, a written motion asking to have the trial court reconsider the sentence or to have the judgment vacated and for leave to withdraw you plea of guilty, setting forth your grounds of the motion.

If the motion is allowed, the sentence will be modified or the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made.

Upon the request of the State, any charges that may have been dismissed as part of a plea agreement will be reinstated and will also be set for trial.

If you are indigent, a copy of the transcript of the proceedings at the time of your plea of guilty and sentence will be provided without cost to you, and counsel will be appointed to assist you with the preparation of the motions.

If the motion to reconsider sentence or vacate the judgment is denied and you still desire to appeal, you must file your notice of appeal within 30 days of the date that the motion was denied.

In any appeal taken from the judgment on the plea of guilty, any issue or claim of error not raised in the motion to reconsider the sentence or to vacate the judgment and to withdraw your plea of guilty shall be deemed waived.

NEGOTIATED PLEAS OF GUILTY and SENTENCING CAP PLEAS– Supreme Court Rule 605(c)

You have the right to appeal.

Prior to taking an appeal, you must file in this trial court, within 30 days of the date on which sentence is imposed, a written motion asking to have the judgment vacated and for leave to withdraw your plea of guilty, setting forth your grounds for the motion.

If the motion is allowed, the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made.

Upon the request of the State any charges that may have been dismissed as part of a plea agreement will be reinstated and will also be set for trial.

If you are indigent, a copy of the transcript of the proceedings at the time of your plea of guilty and sentence will be provided without cost to you, and counsel will be appointed to assist you with the preparation of the motions.

If the motion to vacate the judgment is denied and you still desire to appeal, you must file your notice of appeal within 30 days of the date that the motion is denied.

In any appeal taken from the judgment on the plea of guilty, any issue or claim of error not raised in the motion to vacate the judgment and to withdraw your plea of guilty shall be deemed waived.

Text is virtually verbatim except it is written in 2nd person tense and it has the addition in 605 (b) and (c) of "If the motion...is denied...file...appeal within 30 days..." as recommended at a judicial seminar. jpc 5/08

TASC Overview for the Judge of the Circuit Court of Illinois

Treatment Alternatives for Safe Communities (TASC)

a/k/a Treatment Alternatives For Criminal Justice Clients, f/k/a Treatment Alternatives To Street Crimes

20 ILCS 301/40-5 et seq

MUST ADVISE OF ELIGIBILITY TO REQUEST TASC TREATMENT AND PROBATION IF:

- The court has reason (i.e. probable cause) to believe that the individual who is charged with or convicted of a crime suffers from alcoholism or other drug addiction, and
- The individual does not fall in any of the following disqualifying categories:
  - The crime is a crime of violence per 20 ILCS 301/1-10: murder, voluntary manslaughter, criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, armed robbery, robbery, arson, kidnapping, aggravated battery, aggravated arson, or any other felony which involves the use or threat of physical force or violence against another.
  - The crime is a violation of the Controlled Sub Act: §401 (a), (b) or (c) if a prior conviction of a non-probationable felony or this violation is non-probationable, or §401(d) if this violation is non-probationable, or §401.1, §402(a), §405 or §407; or of the Cannabis Control Act: §4(d), (e), (f), or (g), §5(d), (e), (f), or (g), or §5.1, §7, or §9; or of the Meth Control & Community Protection Act: §15, 20, 55, 60 or 65.
  - The person has a record of 2 or more convictions of a crime of violence.
  - There is another felony pending against the person.
  - The person is on probation or parole and the appropriate parole or probation authority does not consent.
  - The person elected and was admitted to a designated program on 2 prior occasions within any consecutive 2-year period.
  - The person has been convicted of residential burglary and there is a record of one or more felony convictions.
  - The crime is a DUI or a similar provision of a local ordinance, or
  - The crime is reckless homicide or reckless homicide of an unborn child, in which the cause of death consists of DUI of alcohol, drugs, or a combination thereof.

(There are no reported reversals for denial of TASC, but there are reversals for failure to inform of TASC.)

ADMONISHMENTS TO A DEFENDANT WHO MUST BE TOLD OF TASC OPTION

1. There is reason to believe that you are an individual who suffers from alcoholism or other drug addiction. You may be eligible to make election for treatment under the supervision of a licensed program designated by the Illinois Department of Human Services. The local designated program is called "TASC".

2. If you elect to submit to treatment, if you are accepted for treatment by the TASC program, and if the court places you on TASC probation, you shall be subject to terms and conditions of "traditional" probation under the Unified Code of Corrections. In addition, you must successfully comply with treatment required at the discretion of the TASC program.

3. If the court places you on TASC probation, you shall be placed under the supervision of the TASC program for a period not to exceed the maximum prison sentence [or "jail sentence" for misdemeanors] that could be imposed for your conviction or 5 years, whichever is less.

4. If you adhere to the requirements of the TASC program and fulfill the other conditions of probation ordered by the court, you will be discharged, but any failure to adhere to the requirements of the TASC program is a breach of probation.

5. Do you understand what I have said? Do you make election for treatment under the supervision of the TASC program?

PROCEDURE FOR THE COURT IF TASC OPTION IS ELECTED

1. Order a TASC examination. Most probation offices can assist. The purpose is to determine whether the defendant suffers from alcoholism or other drug addiction and is likely to be rehabilitated through treatment. The court is to receive a report from TASC. TASC must accept the defendant or no TASC probation may be requested or given.

2. At sentencing, determine if the defendant suffers from alcoholism or other drug addiction. If not, no TASC. If yes, TASC may yet be denied if the court finds that:

-the individual is not likely to be rehabilitated through treatment,

-there is no significant relationship between the addiction or alcoholism of the individual and the crime committed, or

-imprisonment or periodic imprisonment is necessary for the protection of the public.

3. At the successful conclusion of the TASC probation and if certain criteria are met, the court may vacate the judgment and dismiss the case. Unless good cause is shown, the motion to vacate must be filed within 30 days of imposition of TASC probation even though it is not heard until TASC probation is completed.

Judge John Coady

revised 5/06

Trial *in Absentia* Overview

For the Judge of the Circuit Court of Illinois
725 ILCS 5/113-4 (e) and 725 ILCS 5/115-4.1

A. The Necessity of an Admonition

If trial *in absentia* is contemplated, the defendant must have been advised personally and in court of that possibility. 190 Ill. App. 3d at 274. The Supreme Court has recommended that the admonishment be given at arraignment 147 Ill. 2d at 481. (Some give at first appearance.) The warning per 725 ILCS 5/113-4 (e) is:

You are advised that if you escape from custody or are released on bond and fail to appear in court when required by the court then your failure to appear will constitute a waiver of your right to confront the witnesses against you and trial could proceed in your absence.

1. A general waiver of arraignment does not include waiver of the trial *in absentia* warning. The court must either give the admonition or obtain a waiver of giving the admonition. 153 Ill. App. 3d at 841.
2. The warning need not specifically include that sentencing may also occur in defendant's absence. 239 Ill. App. 3d at 182. But some say, "...and trial **and sentencing** could proceed in your absence.")

B. Procedure upon Defendant's Failure to Appear

When a defendant fails to appear, the state must establish a *prima facie* case of willful absence. The State may do so by proving that the defendant (1) was advised that failure to appear may result in a trial *in absentia*, (2) was advised of the trial date, and (3) did not appear. 188 Ill. 2d at 342-343.

a. The defendant's absence prior to trial is no bar to indictment, information, or arraignment. If the defendant is absent at arraignment, the court shall enter a "not guilty" plea. §115-4.1(a).

b. Notice of trial date to the defendant must have been given personally in open court or by certified mail to the address on the defendant's bond sheet. §115-4.1(a).

c. If a defendant becomes absent during the middle of trial, it is required that the defendant was previously warned of trial *in absentia* in order to proceed. 125 Ill. 2d at 41. The statute contains a two-day waiting period for a defendant who absents during trial, but that provision is permissive and not mandatory. §115-4.1(a) and104 Ill. 2d at 50.

C. Trial, Post-Trial Motions, and Sentencing

1. If the defendant absented him or herself before a capital trial, no death penalty. §115-4.1(a).
2. Trial shall be by jury unless the defendant had previously waived trial by jury. §115-4.1(a).
3. The absent defendant must be represented by retained or appointed counsel. §115-4.1(a).
4. All procedural, constitutional, and statutory rights and rules of court shall apply as if the defendant were present in court. §115-4.1(a).
5. The court need not give any special jury instruction regarding the defendant's absence. 339 Ill. App. 3d at 520.
6. If a "not guilty" verdict, enter judgment for the defendant. If a "guilty" verdict, set a date for post-trial motions. If post-trial motions are denied, proceed to sentencing. §115-4.1(c).

D. Upon Defendant's Return

1. Defendant may file a motion for new trial or a new sentencing hearing. Defendant must show failure to appear was both without his or her fault and due to circumstances beyond his or her control. State may also present evidence. §115-4.1(e).
2. If a new sentencing hearing is granted, the court may impose any sentence authorized by law. The court is not in any way limited or restricted by any sentence previously imposed. §115-4.1(f).
3. Evidence offered by either side of the defendant conduct during his or her absence is admissible. §115-4.1(f).

E. Appeal

1. It is permissible for trial counsel to file a *Notice of Appeal* in a defendant's absence without consulting the defendant. 121 Ill. App. 3d at 789.
2. A defendant who, upon return, is denied a new trial or a new sentencing hearing may appeal that denial and also include a request for review of the original judgment and sentence. §115-4.1(g)

Eavesdropping Overview

For the Judge of the Circuit Court of Illinois

725 ILCS 108A-1 et seq

If sending to judges,
1. stat amended?
2. send order
3. send notice

Per 725 ILCS 5/108A-3, **Application for Eavesdropping Device**. It is to have:

1. Identity of applicant and State's Attorney authorizing application.
2. These facts: (a) details of the felony; (b) type of communication sought to be monitored; (c) identity of party who consents, and (d) identity of party sought to be overheard.
3. The period of time or, if not to terminate automatically, then facts establishing additional conversations of the same type will occur thereafter. **[Any order or extension must each terminate within 30 days.]**
4. All previous applications involving the same persons and the actions taken by judges.
5. If the State is applying for an extension, then the results so far or an explanation of failure to obtain results.

You may order additional testimony, witnesses, or evidence. Suggestion: use a court reporter if you do this.

Per 725 ILCS 5/108A-4, **Grounds for Approval or Authorization**

a) One party to the conversation has or will have consented to the use of the device;
b) There is reasonable cause for believing that an individual is committing, has committed, or is about to commit a felony under Illinois law;
c) There is reasonable cause for believing that particular conversations concerning that felony offense will be obtained through such use; and
d) For any extension authorized, that further use of a device is warranted on similar grounds.

Per 725 ILCS 5/108A-5, **Specifics of the Order: [If you deny the request, go to notice section at the bottom.]**

1. Identity of consenting person with a requirement any conversation must include this person.
2. Identity of the other person or persons, if known, who will participate in the conversation.
3. Period of time of authorization and a statement whether the use shall automatically terminate when the described conversations have been first obtained.

Issue no order ... for any period longer than 30 days, including extensions.

Additionally, consider these suggestions:

1. Direct that an MR file be opened immediately to avoid forgotten or lost applications. Eavesdropping files are to be sealed. (But warn the clerk that other documents will subsequently be filed.)
2. Set a status hearing **[the first of two court dates]** on a specific date "immediately after the expiration of the period" to receive recordings per 5/108A-7(b). This is to avoid forgotten submission of recordings.

Per 725 ILCS 5/108A-7, **Retention and Review of Recordings** (See the form order which covers all this.)

1. Receive the recordings immediately after the expiration of the period of the order or extension.
2. You must be the judge that listens to the tapes. Listen to the tapes, determine if they are within your order, and make a record of that determination to be retained with the tapes (use form order). The statute gives no direction if the tapes are not within your order.
3. Order the recordings sealed. Order custody somewhere, usually with the agency that did the eavesdropping. A copy of your order is to be kept with the recordings. Suggestion: Use option of destruction only if a reason.
4. Order the State's Attorney to prepare, but not issue, the notice(s) to parties overheard [with addresses!]. Set a status date **[the 2nd of the 2 court dates]** prior to this deadline. This is to ensure the State has submitted notices.
5. Order the court file sealed if you have not done so already. Note: But tell your clerk that copies of the notices referred to above and below will subsequently have to be filed in this court file.

Per 725 ILCS 5/108A-8, **Notice to Parties Overheard**

1. **You, the judge, are responsible to see that these notices issue.** You can direct the State's Attorney's Office to prepare the notices for you. This notice requirement includes granted and denied requests.
2. Within 90 days of a denied application or 90 days of the expiration of the overhear period on a granted application, notice is to issue to persons named in the order or application and such other persons in the recording as you determine justice requires be notified.
3. The notice shall include: (1) notice of the entry or denial; (2) the date; (3) the period, and (4) notice whether eavesdropping devices were used and whether conversations are recorded.
4. When the State submits the notices, have the clerk or staff issue them. Form of service is not specified. Close file.
5. For good cause, the notice required by this subsection may be postponed. But set another status date to make sure the notices do issue.

Judge John Coady

revised 11/06

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
_____ COUNTY, ILLINOIS

IN THE MATTER OF	)	
USE OF AN EAVESDROPPING DEVICE	)	**Case No.**
Against:	)	
	)	
_____,	)	

EAVESDROP RETENTION AND REVIEW ORDER
725 ILCS 5/108A-7

The Court having issued an eavesdropping order pursuant to 725 ILCS 5/108A-4 makes the following findings:

A. The recordings made pursuant to the eavesdropping order have been made available to me.

B. I have listened to the recordings. I find that they are: ☐ within the previously issued order.
☐ not within the previously issued order.

IT IS THEREFORE ORDERED THAT:

1. The recordings shall be sealed and kept in the custody of: _____

2. Per the statute, "[T]he recordings shall not be destroyed except upon order of the judge hearing the application and in any event shall be kept for 10 years if not destroyed upon his order."

3. A copy of this Order shall be kept with the recordings as the "record of determination" required by statute.

4. The original application, orders and other court documents shall be sealed and kept in the custody of the Circuit Clerk. (Note to clerk: the notices referred to in the next paragraph should be included among the sealed court documents.)

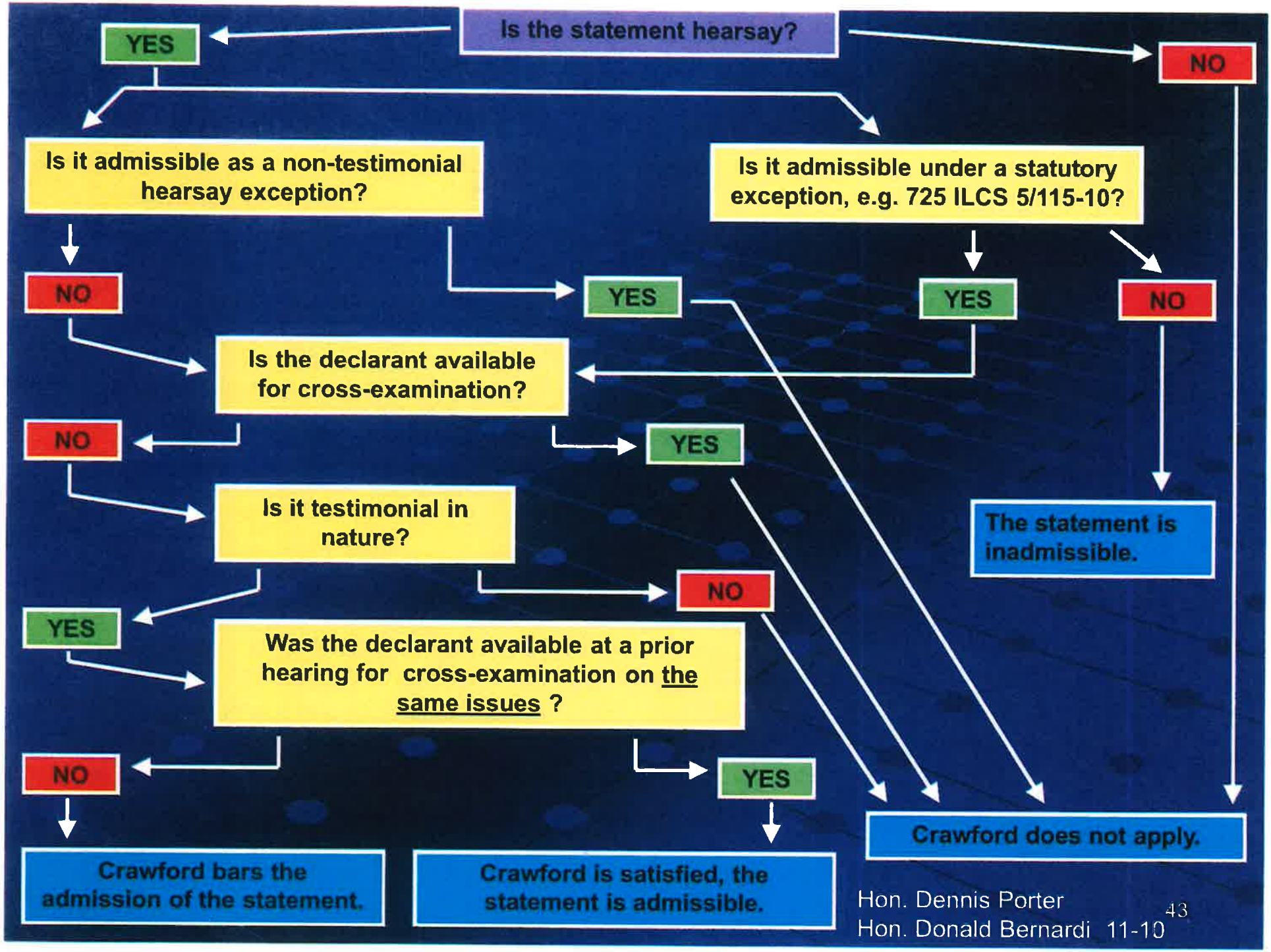
5. The statute at 725 ILCS 5/108A-8 directs the judge to cause notice to be served on the person named in the order or application and on such other persons as the judge may determine not later than 90 days after the filing of an application for an authorization which is denied or the termination of the period of an order or extension. This court hereby orders the State's Attorney's Office to prepare the necessary notice(s) in proper form and submit them to the court for issuance.

6. Status is set _____, 20_____ at _____:_____ to confirm that the State's Attorney's Office has submitted the appropriate notices, to order the Circuit Clerk to issue the notices with a copy of each notice being retained in this court file, and to close this file.

7. Per the statute, this file "shall not be destroyed except on the order of the issuing or denying judge or after the expiration of 10 years time if not destroyed on his order."

Dated: _____

_____
Judge of the Circuit Court



Hon. Dennis Porter
Hon. Donald Bernardi 11-10

Children and Retarded Persons Hearsay Exception Overview

For the Judge of the Circuit Court of Illinois

725 ILCS 5/115-10

A. Types of crimes: offenses alleging a physical or sexual act perpetrated upon or against certain victims. §115-10(a). The offenses are of a kidnapping, sexual, and bodily harm nature. The list in the statute is not all inclusive. 306 Ill. App. 3d at 296.

B. Types of victims: children under 13 and persons moderately, severely, or profoundly mentally retarded at the time the act was committed. §115-10(a).

C. Type of hearsay (sometimes called "outcry hearsay"):

(1) Testimony by the victim of an out of court statement made by the victim that he or she complained of the act to another; (i.e. the victim testifying about prior complaints). §115-10(a)(1).

(2) Testimony of an out of court statement made by the victim describing any complaint of the act or matter or detail pertaining to any act which is an element of the offense; (i.e. others testifying about prior complaints), includes video tapes, 183 Ill. 2d at 112, and nonverbal communication 251 Ill. App. 3d at 465. §115-10(a)(2).

Note: §115-10 is just one exception to the hearsay rule. Parties may advance several bases for admission of hearsay.

D. Prerequisites for admission:

(1) **Notice** to adverse party by the proponent of intent to use, with particulars of the statements. §115-10(d).

(2) **Hearing** outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability. The relevant circumstances include only those that surround the making of the statement. 497 U.S. at 819. The test is whether evidence shows "particularized guarantees of trustworthiness." 497 U.S. at 816-823 and 244 Ill. App. 3d at 800. Preferable to hold prior to trial rather than during trial. 264 Ill. App. 3d at 192. Victim need not testify at this hearing. 322 Ill. App. 3d at 278-280. Defendant must be present unless defendant waives presence. 194 Ill. 2d at 72-73. It's "appropriate" for court to state reasons for its findings but not required. 158 Ill. 2d at 163-164. §115-10(b).

(a) There is **no mechanical test** to judge reliability. Rather, the unifying principle is that the factors relate to whether the child declarant was particularly likely to be telling the truth when the statement was made. 497 U.S. at 822.

(b) **Some factors** to consider: (1) spontaneity and consistent repetition, (2) mental state of the declarant, (3) use of terminology unexpected of a child of similar age, (4) lack of motive to fabricate, (5) the child's physical condition, (6) the nature and duration of the sexual act, (7) the relationship of the child and the accused, (8) reaffirmance or recantation, (9) whether the child is likely, apart from the incident, to have sufficient knowledge of sexual matters to realize the act is possible and sexually gratifying to some, (10) whether the language is embarrassing and, therefore, only spoken if true, (11) and whether it was a cry for help. Promptness is factor, not a requirement. 246 Ill. App. 3d at 701.

(12) Failure to record statement if equipment is available is a negative factor. 215 Ill. 2d at 211.

Note: do not confuse the reliability analysis above, where relevant circumstances include only those that surround the making of the statement, with the corroboration analysis below, where there is no such rule.

(3) **The victim**:

(a) **Testifies** at trial §115-10(b)(2)(A) [regardless if the hearsay is "testimonial" or "non-testimonial"] or

(b) **Is unavailable** and there is **corroborative evidence** of the act that is the subject of the statement. §115-10(b)(2)(B). But *Crawford v. Washington* 541 U.S. 36 (2004) bars any "testimonial hearsay" where the declarant is unavailable at trial and there was no prior opportunity for cross examination.

(i) "Unavailable" witnesses include those children who are unable to testify because of fear, inability to communicate in the courtroom setting, or incompetence. 225 Ill. 2d at 315.

(ii) **"Testimonial hearsay"** concept: reasonably expected to be available for use at trial. Case by case determination. Possibly not statements by child to parent. 225 Ill. 2d at 301-302. Includes statements to police and social workers investigating a crime. 352 Ill. App. 3d at 781. Not statements to medical personnel for purpose of treatment, but does include identification of perpetrator. 355 Ill. App. 3d at 37-38.

(4) If the victim is a child under 13, then the hearsay statement must have been made before the child became 13 or within 3 months after the offense, whichever is later. §115-10(b)(3).

(5) The age of the child at trial is irrelevant. Only the ages at the time of the offense and at the time of the statements are relevant. §115-10(b)(3) and 296 Ill. App. 3d at 61.

E. Instruction to jury: Illinois Pattern Jury Instructions, Criminal, No. 11.66 must be given. §115-10(c). But it may not be reversible error to fail to give if the statement was admitted pursuant to other hearsay exception(s) in addition to §115-10 . 193 Ill. 2d at 358.

Drug Asset Forfeiture Proceeding Overview

For the Judge of the Circuit Court of Illinois
725 ILCS 150/1 et seq

1. **At the first court date**, if no one named in the verified complaint has answered or appears at the hearing:

a. Inquire about service. If current address is known, then service is by personal service or certified mail, return receipt requested. The return receipt need **not** be signed and returned. If the address is not known, then service may be by publication. 725 ILCS 150/4.

b. Depending on what kind of summons or other notice was included with the service of the complaint or otherwise issued, there may also be a need to check on whether notice was given for today's hearing.

c. This is an *in rem* proceeding, so it is not necessary to specifically "default" individuals. But, within your discretion, you may do so on the basis that an individual, who was given proper notice or service, failed to defend against a claim in court by failing to file pleadings or to appear.

d. You may enter a [*Default*] *Order of Forfeiture* upon the *Verified Complaint for Forfeiture*.

2. At **the first court date**, if someone appears but has not answered, ask if the forfeiture is being contested. If so, grant leave to file an answer. Direct the individual to the requirements of an answer in 725 ILCS 150/9(E). There is no right to a court appointed attorney. If the forfeiture is not being contested, you may enter an *Order of Forfeiture* upon the *Verified Complaint for Forfeiture*.

3. If an **answer** is filed, the hearing must be held within 60 days after the filing of the answer unless continued for good cause. 725 ILCS 150/6(F).

4. The **hearing** per 725 ILCS 150/9:

a. The State has the initial burden of showing probable cause for forfeiture. If that burden is carried, then the claimant has the burden of showing by a preponderance of the evidence that his or her interest in the property is not subject to forfeiture as defined in 725 ILCS 150/8, *Exemptions from forfeiture*. 725 ILCS 150/9(G).

b. During the probable cause portion, all relevant hearsay evidence and information is admissible. For the other portions of the hearing, the laws of evidence relating to civil actions apply. 725 ILCS 150/9(B).

5. The **ruling**:

a. The statute speaks of an *order* rather than a *judgment*. 725 ILCS 150/9(H).

b. If the State fails to carry its probable cause burden or the claimant proves exemption from forfeiture, order the interest in the property returned or conveyed to the claimant. 725 ILCS 150/9(H). If a *cost bond* was filed, then order it returned to the claimant, minus 10% clerk's fee, or otherwise as you direct. 725 ILCS 150/6(C)(3).

c. If the State carries its probable cause burden and the claimant fails to prove exemption from forfeiture, order the property forfeited to the State. 725 ILCS 150/9(H). If a *cost bond* was filed and the forfeiture is granted for any of the property, order the clerk to transfer 90% of the bond to the State's Attorney to be applied to the costs of prosecution and that the clerk retain 10% of the bond as costs. 725 ILCS 150/6(C)(3).

d. Note: *costs bonds* are only filed if the forfeiture action began as a *non-judicial forfeiture*.

e. The order should include "final and appealable" language.

6. If you examine the **statute**, 725 ILCS 150/1 *et seq*, do not confuse the provisions on *non-judicial forfeiture* with *judicial in rem forfeiture*. A *non-judicial forfeiture*, if properly contested, will eventually become a *judicial in rem forfeiture*. Except for the disposition of any bond filed in a *non-judicial forfeiture*, the *non-judicial forfeiture* provisions (725 ILCS 150/6, 14) are generally irrelevant to your consideration.

One Page Bench Book Fitness Procedure Summary

For the Judge of the Circuit Court of Illinois

725 ILCS 5/104-10 et seq

I. Fitness as an issue: The defense, state, or court (*sua sponte* duty) may raise the issue of fitness at any time. §104-11(a). If *bona fide* doubt raised, order a fitness exam and report. §104-13. Defense may request exam to see IF a *bona fide* doubt exist. Standard is court's discretion. §104-11(b). If an exam is ordered, give the defendant the §104-14 admonition. If *bona fide* doubt already raised or raised from report, fitness hearing to be held within 45 days of receipt of fitness report (due in 30 days). §104-16(a). At fitness hearing, preponderance burden on State. §104-11(c). Right to jury if before conviction.§104-12. Possible findings:

A. Fit to stand trial or to plead. §104-16(d). Proceed with case.

B. Unfit with a substantial probability, if provided with a course of treatment, of attaining fitness within 1 year. Order treatment. §104-16(d). Max length is for 1 year. Set first **"90-day hearing**." §104-20

C. Unfit but unable to determine if there is a substantial probability, if provided with a course of treatment, of attaining fitness within 1 year. Order treatment. §104-16(d). Set case to make that determination for a date "asap" after §104-17(e) report to be filed, which is due in 30 days. §104-16(d). Then proceed with II.B or III below.

II. Initial Period of Treatment: 90-Day Hearings every 90 days. §104-20. Defendant's presence waivable per §104-16(c). No stipulation "dft is fit/unfit." Accept stipulation report is admissible. 103 Ill 2d 111. Possible findings at 90-day hearings:

A. Fit. §104-20(a)(1). Includes a "trial with special provisions and assistance" §104-22. Proceed with the case.

B. Still unfit but making progress under treatment toward attainment of fitness within one year from the date of the original finding of unfitness. §104-20(a)(2). Continue or modify original treatment order. §104-20(c). Set next "90-day hearing." At end of 1 year, proceed with fitness not expected within 1-year procedures (III below).

C. Still unfit and not making progress toward attaining fitness with no substantial probability that fitness will be attained within 1 year of original finding of unfitness. Proceed with III below.

III. Extended Period of Treatment: If unfit and will not attain or has not attained fitness within 1 yr, Dft may ask for discharge hearing. §104-23(a). State to pick discharge hearing, dismissal with prejudice, or have DHS attempt civil commitment. §104-23(b).

A. **If discharge hearing**, aka "innocent only hearing" or "not 'not-guilty' hearing." §104-23(a) or (b)(1). Findings:

1. Not proven beyond a reasonable doubt. Acquitted. State may file civil commitment. §104-25(b).
2. Not guilty by reason of insanity. Acquitted. Proceed per 730 ILCS 5/5-2-4 for NGRI. §104-25(c).
3. Not acquitted; sometimes called "not 'not guilty.'" May remand for treatment extended 5 yrs for murder, 2 yrs for Class X or 1, 15 mo for Class 2, 3, and 4. §104-25(d). Continue to hold **90-Day Hearings**, with possible findings:
   1. Fit. Proceed with trial.
   2. Remains unfit. Continue or modify original treatment order. §104-20(c). Set next "90-day hearing." At the end of the extended period of treatment, go to IV below.

B. **If remand to DHS for civil commitment hearing per MHDDC**: Civil courts hold hearing. If committed, dismiss charges with leave to reinstate. DHS to notify if defendant to be released. §104-23(b)(3). State to then decide if reinstating.

IV. The "g(2)" Period of Treatment: At end of extended period of treatment hold hrg.§104-25(g) Issues of fitness and treatment.

A. If fit, proceed to trial. §104-25(g)(1).

B. If not fit, determine whether dft is subject to involuntary admission under NGRI per §104-25(g)(2)(ii) or constitutes a serious threat to public safety. §104-25(g)(2). If not, release dft. §104-25(g)(3). See IV.G for options. No outpatient treatment.

C. If commitment ordered, hold periodic g(2) hearings for issues of fitness and treatment. §104-25(g)(2).

1. Hold every 180 days, unless request for every 90 days. §104-25(g)(2). State has burden of going forward with evidence and burdens of proof. §104-25(g)(2)(i). Consider the treatment plan report and any other evidence. Waiver of defendant's presence with the filing of a physician's certificate. §104-16(c).
2. Fitness burden is by a preponderance of the evidence. If defendant has become fit, proceed to trial.
3. Treatment burden is by clear and convincing evidence. Possible findings:
   a. Subject to involuntary admission. §104-25(g)(2)(i)(A). Set the next review hearing.
   b. In need of mental health services in the form of inpatient care. §104-25(g)(2)(i)(B). This finding is a basis for recommitment. Set next hearing. 730 ILCS 5/5-2-4(b).
   c. In need of mental health services but not subject to involuntary admission or inpatient care. §104-25(g)(2)(i)(C). Also called "outpatient" services. Set next hearing. Reports and hearings continue. §104-25(g)(2).
   d. The defendant is no longer in need of mental health services. Go to IV.G below.

D. Reports will come in every 90 days. On "off" 90 day dates, review report. Make sure 180 day hrg date is already set.

E. The maximum treatment period, including g(2) treatment, may not exceed the maximum sentence the defendant would have been subject if convicted. §104-25(g)(4). Do not reduce by "good time" credit. 142 Ill. App. 3d 858.

F. This court must approve conditional release from DHS. §104-25(g)(2). Conditions that assure progress in treatment and safety of defendant and others. Maximum period of 5 years, with additional 5 year extensions. 730 ILCS 5/5-2-4(a)(1)(D). Reports and hearings continue. §104-25(g)(2). Don't exceed max sentence if were convicted. 725 ILCS 5/104-25(g)(4).

G. If g(2) treatment is denied or ends, due process clause prohibits State from proceeding until fitness is restored. 420 US 162. Statute gives little guidance. Await fitness. Require dft to inform clerk of address change. Or State could *nolle* w/o prej.

SOME JUVENILE COURT ADMONISHMENTS

Rights of parties to proceedings, 705 ILCS 405/1-5(1).
You have the right:

- to be present
- to be heard
- to present evidence material to the proceedings
- to cross-examine witnesses
- to examine pertinent court files and records and also
- the right to be represented by counsel. If you are unable to afford an attorney, one can be appointed for you if you so request.

Minor's rights in juvenile delinquency cases:

- plead NG and persist in that plea
- trial by a judge
- proof beyond a reas doubt
- presumption of innocence
- face accusers
- present a defense but there is no burden to present a defense
- subpoena witnesses
- testify
- remain silent w/o that silence being used against you
- a speedy trial

Admonishment to parents, etc. in abuse, neglect, and dependency cases, 705 ILCS 405/1-5(3).

- At the first appearance, the court shall admonish the parents that *"If the court declares the child to be a ward of the court and awards custody or guardianship to the Department of Children and Family Services...*[Continued below]
- Upon a finding of abused neglect, or dependency, the court shall admonish the parents that...[See below]
- When the court declares a child to be a ward of the court and awards guardianship to the Department of Children and Family Services, the court shall admonish the parents, guardian, custodian, or responsible relative that: [See below]

"The parents must cooperate with the Department of Children and Family Services, comply with the terms of the service plans, and correct the conditions that require the child to be in care, or risk termination of their parental rights."

List of Possible Dispositions in Juvenile Cases

Dispositions in **ABUSE, NEGLECT OR DEPENDENCY CASES** include:

- placement of the minor with the current parent(s), guardian or custodian with or without protective orders or orders of supervision by DCFS, or
- placement of the minor with a suitable relative or other person, or
- placement of the minor with DCFS, including foster homes, mental health facilities, child care institutions

Dispositions in **MINORS REQUIRING AUTHORITATIVE INTERVENTION CASES** include:

- [placement as described above for abused, neglected or dependent children, so read the above]
- placement with the parents, guardian or legal custodian under the supervision of the probation office,
- an order to attend school
- payment of restitution, payment of a probation supervision fee,
- suspension of driver's license to age 18.

Dispositions or sentences in **TRUANCY CASES** [Truant Minor in Need of Supervision] include:

- compliance with an educational plan provided by the regional superintendent of schools,
- counseling,
- payment of a fine from $5 to $100 each day absent without valid cause,
- performing public service work, including picking up litter in parks or along highways,
- suspension of driver's license to age 18, and
- detention sentences for contempt for any violation of any court order.

Dispositions or sentences in **JUVENILE DELINQUENCY CASES** include:

- probation or conditional discharge,
- public service work,
- drug and alcohol evaluation, treatment, and testing
- school attendance, payment of restitution, suspension of driver's license to age 18,
- curfews, home confinement which may or may not be electronically monitored,
- change of custody to a relative or other suitable person
- detention for a period not to exceed 30 days,
- [optional] begin with a juvenile sentence but re-sentenced as an adult if the juvenile order is violated, or
- commitment to the Illinois Department of Corrections, Juvenile Division.

Right to Appeal, 705 ILCS 405/1-5(3). Upon an adjudication of wardship in a juvenile case, the court shall inform the parties of their right to appeal therefrom as well as from any other final judgment of the court.

Fitness Overview I: The Period Leading up to the Fitness Determination
For the Judge of the Circuit Court of Illinois
725 ILCS 5/104-10 *et seq*

1. **Fitness defined**: Unfit if, because of mental or physical condition, unable to understand the nature or purpose of proceedings against him/her or to assist in the defense. A defendant is presumed to be fit. §104-10.

2. **The defense, state, or court may raise the issue of fitness at any time.** If *bona fide* doubt raised, Court shall order a determination of the issue before proceeding further, §104-11(a), except for bail motions, §104-13(d). Speedy trial tolled. §103-5(a). If *bona fide* doubt, cannot proceed *pro se*. 121 Ill. App. 3d 548, 551. Active standby counsel may be acceptable until defendant actually found unfit. 235 Ill App 3d 185, 190-191.

3. **If *bona fide* doubt raised, order a fitness exam and report.** If mental condition, appoint physician, clinical psychologist, or psychiatrist. §104-13(a). If physical condition, appoint physician(s). §104-13(b). Report is due within 30 days. §104-15(a). Set status to see if report was filed and to set fitness hearing, or just immediately set fitness hearing. The fitness hearing is to be within 45 days of receipt of report. §104-16(a). Indigent defendant may get independent exam. §104-13(e). You must hold a fitness hearing regardless of the results of the exam. Reports are to be maintained separately by the clerk. Counsel and the court may examine them. §104-19.

4. **Exam to see IF a *bona fide* doubt exist:** If defendant makes motion for fitness exam to see if a *bona fide* doubt exists, standard is court's discretion. §104-11(b). If you grant the motion, order a fitness exam and report, but specify no *bona fide* doubt has yet been raised. 347 Ill App 3d 278. It's same report as when *bona fide* doubt is actually raised. Case may proceed until, and if, *bona fide* doubt raised [§104-11(b)], but speedy trial is tolled. 128 Ill App 3d 548. If report comes back unfit, hold fitness hearing.

5. **You must advise the defendant as follows if an exam is ordered:**

"Statements made by you and information gathered in the course of any examination or treatment ordered under Illinois fitness laws shall not be admissible against you unless you raise the defenses of insanity or drugged or intoxicated condition.

If you refuse to cooperate with the exam, you can still raise these defenses. But you cannot offer expert evidence or testimony to support those defenses if it's based on an expert's examination of you.

With the exception of what I have already said, no statement made by you in the examination or in ordered treatment which relates to the crime charged or to other criminal acts shall be disclosed by persons conducting the examination or the treatment, except to other members of the examining and treating team, without your informed written consent, and only if you are competent at the time of giving the consent.

You may refuse to cooperate with the examination, but that refusal may be admissible on the issue of your mental or physical condition." §104-14.

6. **If *bona fide* doubt was raised, within 45 days of receipt of fitness report, hold fitness hearing**. §104-16(a). Burden on state. Preponderance of the evidence standard. §104-11(c). Court may call its own witnesses and conduct its own inquiry. §104-11(c). Right to jury if prior to trial of pending charge. §104-12. A defendant has the right to be present at every hearing on fitness; waived only with physician certificate. §104-16(c). Fitness presumption does not apply. 185 Ill App 3d 1079.

Matters admissible include, but not limited to: (1) Defendant's knowledge and understanding of the charge, the proceedings, the consequences of a plea, judgment or sentence, and the functions of the participants in the trial process. (2) The defendant's ability to observe, recollect and relate occurrences, especially those concerning the incidents alleged, and to communicate with counsel. (3) The defendant's social behavior and abilities; orientation as to time and place; recognition of person, places and things; and performance of motor processes. §104-16(b).

Never accept a "Defendant is fit/unfit" stipulation. Instead, accept a stipulation as to what an expert would testify i.e., author of report is an expert and would testify in accordance with the report. 103 Ill. 2d 111.

7. **Jury (or you if bench) is to make one of these four findings at the conclusion of the fitness hearing:**

a. Fit to stand trial or to plead. §104-16(d). [Proceed with case.]

b. Unfit with a substantial probability, if provided with a course of treatment, of attaining fitness within 1 year. §104-16(d). [Go to *Fitness Overview II: The Initial Period of Treatment.*]

c. Unfit but unable to determine if there is a substantial probability, if provided with a course of treatment, of attaining fitness within 1 year. §104-16(d). [Go to *Fitness Overview II: The Initial Period of Treatment.*]

d. Unfit with no substantial probability, if provided with a course of treatment, of attaining fitness within 1 year. §104-16(d). [Go to *Fitness Overview III: The Extended Period of Treatment.*]

Fitness Overview II: The Initial Period of Treatment

For the Judge of the Circuit Court of Illinois

725 ILCS 5/104-10 et seq

1. **Use this page if**, at the fitness hearing, the finding is either: *finding of unfit with a substantial probability, if provided with a course of treatment, of attaining fitness within 1 year* per §104-16(d) or *finding of unfit but unable to determine if there is a substantial probability, if provided with a course of treatment, of attaining fitness within 1 year* per §104-16(d). Also use for the subsequent "90-Day Hearings." §104-20.

2. **At the conclusion of the fitness hearing, order treatment for the purpose of rendering defendant fit.** §104-16(d). If eligible to be or released on bail, select the least physically restrictive form of treatment. §104-17(a).

If a mental condition, may place with DHS or other MH facility. May order in or out patient treatment. If DHS, place in secure setting unless you determine compelling reasons not necessary. If in jail, remain until placed for treatment. Sheriff to transport. §104-17(b). If on bond and going to DHS, discretion to order jail or to report as DHS directs. If a physical condition, may place under the supervision of DHS or other appropriate public or private facility or treatment program. May order inpatient or outpatient treatment. §104-17(c).

If finding was *expected to attain fitness within one year*, set case within 90 days for "90-day hearing." §104-20.

If the finding was *unable to determine...if...attaining fitness within 1 year*, set case to make that determination for a date "asap" after the §104-17(e) 30-day report to be filed, which is due in 30 days. §104-16(d).

3. **Reports:** The treatment supervisor is to file a 30-day report within 30 days, and if believes a probability of fit within 1 year, then also treatment plan filed. §104-17(e). Thereafter, the supervisor to file progress reports 7 days prior to hearings, or when believes defendant is fit, or when supervisor believes defendant will not be fit within I yr of original finding of unfitness. §104-18(a). Review reports upon receipt to see if acceleration of hearing is triggered by opinion of fitness or will not be fit in 1 year. §104-20(a) & 18(a). Clerk to maintain the reports separately. §104-19.

4. **If the finding was *unable to determine...if...attaining fitness within 1 year*, the next hearing is to make that determination.** Held asap after 30-day report is filed. §104-16(d). Make one of these findings:

a. Unfit with a substantial probability, if provided with a course of treatment, of attaining fitness within 1 year. §104-16(d). [Set 90-Day hearing 90 days from finding of unfitness. Go to *90-Day Hearing* section, par 5.]

b. Unfit with no substantial probability, if provided with a course of treatment, of attaining fitness within 1 year. §104-16(d). [*Go to Fitness Overview III: The Extended Period of Treatment.*]

c. Restored to fitness. Resume with the original criminal case.

5. **If the finding was *unfit with a substantial probability...of attaining fitness within 1 year*, the next hearing is the first 90-Day Hearing.** §104-20(a). "90-Day Hearings" are held every 90 days from an order to undergo or continue treatment. Do for up to one year. To reexamine the issue of defendant's fitness. Accelerate within 21 days of progress report saying defendant is fit or will not attain fitness within 1 year of original finding of unfitness.

Hearing is by the court without a jury. In practice, usually short. Consider written report. At the first 90-Day hearing, you will have both a 30-Day Report and a Progress Report. Both sides may present additional evidence.

At a 90-Day Hearing, make one of these findings:

a. Fit to stand trial or plead. §104-20(a)(1). Proceed with the criminal case. May order continued care or treatment pending conclusion of case, if supervisor agrees. §104-20(b).

i. A subcategory is to consider a "trial with special provisions and assistance" if it will render defendant fit. §104-22. Has special sentencing provisions. §104-26.

b. Still unfit but making progress under treatment toward attainment of fitness within one year from the date of the original finding of unfitness. §104-20(a)(2). Continue or modify original treatment order. §104-20(c). Set next "90-day hearing."

c. Still unfit and not making progress toward attaining fitness with no substantial probability that fitness will be attained within 1 year of original finding of unfitness. Go to *Fitness Overview III: The Extended Period of Treatment*. May order continued care and treatment. §104-20(d).

d. Still unfit at the end of 1 year from original finding of unfitness. Go to *Fitness Overview III: Not Expected To Attain Fitness Within 1 Year*. §104-23(b).

6. **Waiver of hearings:** If the defense wishes to waive hearings [§104-16(d), 20(a)], consider instead an abbreviated hearing with defendant's presence waived per §104-16(c) and a stipulation that testimony would have been as is stated in report. This helps to avoid forgotten cases and forgotten defendants.

Never accept a "Defendant is fit/unfit" stipulation. Instead, accept a stipulation as to what an expert would testify, i.e., author of report is an expert and would testify in accordance with the report. 103 Ill. 2d 111.

7. **Proceed on some matters:** May rule on matters not requiring defendant's presence, §104-11(d), some matters must be heard. 302 Ill.App.3d 602, 606

Fitness Overview III: The Extended Period of Treatment

For the Judge of the Circuit Court of Illinois

725 ILCS 5/104-10 *et seq.*

1. Use this page if the jury or you have found that the Defendant is *unfit with no substantial probability, if provided with a course of treatment, of attaining fitness within 1 year* or, if at the end of 1 year, the defendant is still unfit and no special provisions or assistance can compensate for any disabilities and render defendant fit. §104-23(b).

2. The first step: The Defendant may request a discharge hearing. To be held within 120 days unless delay occasioned by defendant. §104-23(a). The State must request the court for one of these three options §104-23(b):

a. Set the matter for a discharge hearing, unless one was already held §104-23(b)(1) or,

b. Release the Defendant and dismiss charges with prejudice §104-23(b)(2) or,

c. Remand the Defendant to DHS for a civil commitment hearing per MHDDC, 405 ILCS 5/1-100 *et seq.* §104-23(b)(3). DHS has 7 days to file paperwork. The civil court conducts this hearing, with a clear and convincing standard. If no commitment, Defendant to return and options are dismiss or discharge hearing.

If the civil court civilly commits defendant:

i. Dismiss criminal case with leave to reinstate. §104-23(b)(3). Court, State and defendant's attorney will be notified by DHS if defendant to be released. State may reinstate upon release, but release does not necessarily mean fit. With criminal case dismissed, you will receive no more reports.

ii. **Rare**: reopen case file, without reinstating the charge, upon defendant's filing of petition for *Lang* due process rights to subsequent fitness hearings and discharge hearing(s). 113 Ill 2d 407.

If a subsequent fitness hearing is held (very rare for civilly committed defendant):

- If defendant remains unfit, remand defendant back to DHS. Reclose file. Criminal charge remains dismissed with leave to reinstate.
- If defendant found fit, State to decide if reinstating case. If so, proceed to trial. Regardless, remand defendant to DHS where defendant has been civilly committed.

If a subsequent discharge hearing is held upon discovery of new evidence:

- If defendant acquitted at a discharge hearing, dismiss. §104-25(d). Remand defendant back to DHS where defendant has been civilly committed.
- If defendant found NGRI, proceed per 730 ILCS 5/5-2-4. §104-25(c).
- If defendant found not "not-guilty," remand to DHS. Reclose file. Criminal charge remains dismissed with leave to reinstate. Remand defendant back to DHS.

3. If the State opts for discharge hearing: Also called "innocent only hearing" or "not not-guilty hearing." Prior to trial, defense entitled to hearings on suppressions motions. 302 Ill.App.3d 602, 606. No jury for discharge hearing. Either side may introduce evidence. Hearsay or affidavit evidence on secondary matters. §104-25(a). Defendant should be present but this right is not absolute. 312 Ill. App. 3d 232. One of these 3 findings:

a. Not proven beyond a reasonable doubt. Enter judgment of acquittal. State has the right to file civil commitment. §104-25(b).

b. Not guilty by reason of insanity. Enter judgment of acquittal. Proceed per 730 ILCS 5/5-2-4 *Proceedings After Acquittal by Reason of Insanity* with evaluation by DHS and hearing. §104-25(c).

c. Not acquitted; sometimes called "not not-guilty." This authorizes the extended period of treatment. May remand for further treatment. May extend the one year treatment period for 5 years for murder, 2 years for Class X or 1, and 15 months for Class 2, 3, and 4. §104-25(d). If at the original fitness hearing, finding was *unfit with no substantial probability, if provided with a course of treatment, of attaining fitness within 1 year*, this will be the first treatment order.

Warning: While remand to DHS for extended treatment is appropriate at this point, do not remand to DHS for an attempt at a civil commitment per §104-23(b)(3). If civil court declines to commit, criminal case must be dismissed. 206 Ill App 3d 361. So just remand defendant for extended treatment.

4. The procedure during the extended period of treatment is substantially the same as the initial period of treatment. 90-Day Hearings are held every 90 days. §104-20. Progress reports will be filed at least 7 days prior to hearings. §104-18. Defendant's presence may be waived with the physician's certificate. §104-16(c). Hearing is to reexamine issue of fitness. Possible findings:

a. Restored to fitness. Set case for trial. §104-20(b). May keep defendant in MH facility during trial with supervisor's agreement. §104-20(b).

b. Remains unfit. Continue or modify original treatment order. §104-20(c). Set next "90-day hearing."

c. Remains unfit at the end of the extended period of treatment. §104-20(g)(2). Immediately go to *Fitness Overview IV: The "g(2) Period of Treatment* for next step.

Fitness Overview IV: The "g(2)" Period of Treatment

For the Judge of the Circuit Court of Illinois

725 ILCS 5/104-10 *et seq.*

[*Warning: case law is limited and statutory law is complex for this period*]

1. Use this page if the period of extended treatment has expired. Hold a hearing that considers fitness and then commitment to DHS. §104-25(g). Hold upon expiration of extended treatment period.

2. Fitness: Upon finding that defendant is fit or can be rendered fit consistent with special provisions and assistance (§104-22), trial may proceed. §104-25(g)(1). Burden for fitness on State by preponderance of evidence.

3. Commitment: If the defendant remains unfit, determine whether the defendant is subject to involuntary admission under the MHDDC (405 ILCS 5/1-100 et seq. but using NGRI statute definition 730 ILCS 5/5-2-4 which may mean "In need of mental health services on an inpatient basis") or constitutes a serious threat to public safety. §104-25(g)(2). If not, release the defendant. §104-25(g)(3). Standard for commitment is clear and convincing evidence. §104-25(g)(2)(i). See paragraph 7 re denial of g(2) treatment. There is no option of outpatient treatment at this point.

If commitment ordered, remand to DHS for treatment in same manner as a civilly committed patient. Order placement in a secure setting unless you determine there are compelling reasons it is not necessary. §104-25(g)(2).

4. Reports: Every 90 days, the facility director is to file a treatment plan report, which includes an opinion whether the defendant is fit and whether the defendant is subject to involuntary admission, in need of MH service on an inpatient bases, or in need of MH services on an outpatient basis. §104-25(g)(2).

If you are having periodic g(2) review hearings every 180 days instead of 90 days, as allowed by statute, review the report on the "off" 90 days to see that it "complies" with this statute and to see if the hearing should be accelerated because report says defendant has attained fitness. §104-25(g)(2)(i), §104-20(a). Make certain there is a setting for the next periodic g(2) hearing.

5. Periodic g(2) hearings during the g(2) period of treatment, for issues of fitness and treatment.

a. Hearings must be held every 180 days, and may be every 90 days upon request. §104-25(g)(2). Hold within 21 days of any report saying defendant is fit. §104-20(a). State has burden of going forward with evidence and burdens of proof. §104-25(g)(2)(i). Consider the treatment plan report and any other evidence.

b. Defendant's presence may be waived with the filing of a physician's certificate. §104-16(c).

c. Defendant is to be represented by private or appointed counsel. §104-25(g)(2)(i).

d. Fitness burden is by a preponderance of the evidence. If defendant has become fit, proceed to trial.

e. Treatment burden is by clear and convincing evidence. Possible findings:

i. Subject to involuntary admission. §104-25(g)(2)(i)(A). Set the next review hearing.

ii. In need of mental health services in the form of inpatient care. §104-25(g)(2)(i)(B). This finding is a basis for recommitment. Set next hearing. 730 ILCS 5/5-2-4(b).

iii. In need of mental health services but not subject to involuntary admission or inpatient care. §104-25(g)(2)(i)(C). Also called "outpatient" services. This finding is not a basis for recommitment. Set next hearing. Even though defendant is out of DHS, reports and hearings continue. §104-25(g)(2).

iv. The defendant is no longer in need of mental health services. Go to par. 7 re "treatment ends."

f. Court to "enter its findings and an appropriate order." §104-25(g)(2)(i).

g. The maximum treatment period, including g(2) treatment, may not exceed max sentence the defendant would have been subject if convicted. §104-25(g)(4). Do not reduce by "good time" credit. 142 Ill. App. 3d 858.

6. Conditional release: This court must approve conditional release from DHS. §104-25(g)(2). Conditional release means the release from the custody of DHS under such conditions as the Court may impose which reasonably assures the defendant's satisfactory progress in treatment or habilitation and the safety of the defendant and others. 730 ILCS 5/5-2-4(a)(1)(D). Reports and hearings continue. §104-25(g)(2).

a. Terms and conditions may include outpatient care, alcoholic and drug rehabilitation programs, community adjustment programs, individual, group, family, and chemotherapy, periodic checks with the legal authorities and/or DHS. 730 ILCS 5/5-2-4(a)(1)(D).

b. Conditional release shall be for a period of 5 years. If a forcible felony, the defendant, treatment provider, or State may petition for extensions in increments of 5 years. 730 ILCS 5/5-2-4(a)(1)(D).

The length of any conditional release is limited by the provision that limits all treatment to a period not to exceed the maximum sentence to which a defendant would have been subject had he or she been convicted in a criminal proceeding. 725 ILCS 5/104-25(g)(4).

7. If court denies g(2) treatment or if g(2) treatment ends, the due process clause of US Const prohibits State from proceeding until fitness is restored. 420 US 162. Statute gives little guidance. Await fitness. Require defendant to keep clerk informed of current address. Or State may *nolle*, with right to refile within limitations of law.

JUDICIAL REMARKS TO A CRIMINAL JURY

Good morning, Ladies and Gentlemen. My name is Judge _____. I will be presiding over the trial that is set today.

Assisting me during the trial will be:

_____County Circuit Clerk _____

Official Court Reporter _____

_____County Court Bailiffs _____

_____

Sheriff's deputies/Sheriff's Security officers _____

_____

You have been called here today to sit as jurors in the case of: The People of the State of Illinois vs. _____

The People of the State of Illinois are represented by:

_____ County State's Attorney _____

_____ County Assistant State's Attorney _____

_____ Assistant Attorney General _____
[Please stand and introduce yourself.]

The Defendant _____ is represented by Attorney _____

_____. [Please stand and introduce yourself and your client.]
[Never refer to the "Public Defender" as the "Public Defender".]

I have some introductory remarks to give to you about this case, court procedure, and some basic principles of criminal law. These are not your final and complete instructions. Those will come at the end of the case, after you have heard the evidence and the arguments of the attorneys.

The Defendant _____is charged in a/an information/ indictment/complaint/traffic citation/traffic ticket with the offense[s] of _____

_____.
More specifically, it is charged that:

[read charges]

This information/indictment/complaint/traffic citation/traffic ticket that I have just read is not to be considered by you as any evidence or as creating any presumption of guilt against the Defendant. It is merely the formal charge necessary to place the defendant on trial.

The defendant is presumed to be innocent of the charge[s] against him/her and this presumption of innocence remains with him/her throughout the trial, even on into your jury deliberations, until you have been satisfied by the evidence that the guilt of the defendant has been proven beyond a reasonable doubt. Throughout this case, the burden of proving the guilt of the defendant beyond a reasonable doubt is on the State and the law does not require the Defendant to prove his/her innocence.

A number of you are about to be called to the jury box to be asked questions by me and then the attorneys. Please do not feel that anyone is trying to needlessly pry into your personal affairs. It is just our way of learning something about you in this jury selection process. And if we ever ask you any question that you would prefer to answer in the court's chambers, please do not hesitate to ask us to do so. The attorneys, defendant, [court reporter], and myself will take you to my office where you may answer with a little more privacy than we have here in the courtroom.

It is your duty to answer truthfully the questions of the court and counsel. After asking a group of you questions, the attorneys, defendant, [court reporter], and myself will meet in chambers to work through the jury selection process. The law allows each side to excuse a certain number of prospective jurors during the course of jury selection. If you are not chosen to serve on this or any other jury, please do not concern yourself with the reasons why you were not selected. Prospective jurors who are excused have just as much fulfilled their obligation as those jurors who are selected to sit through the trial.

The attorneys tell me that they expect this trial to last approximately ____ day[s]. We recognize that service on a jury may result in some inconvenience to you. We realize that we have taken you away from your homes, your families, your jobs, and your personal affairs. If service for this trial is an impossibility for you, I want you to let me know. However, I hope you understand that service on this jury or any other jury, if you qualify as a juror, is not only an obligation but also a privilege that you enjoy as a citizen of this country. Your participation in this process is essential to our system of justice and is greatly appreciated.

Is there any among you that jury service is an impossibility for this trial?

[To the clerk:] Have the jurors been sworn? Please call _____ jurors to the jury box.

Jury Questions

Know the attorneys
Know the defendant
Read or heard anything about the case
Know the witnesses

You or anyone close to you been charged with this or a similar crime?
You or anyone close to you been a victim of this or a similar crime?

Ever serve as a juror on a coroner's jury, on a grand jury, or on a petit jury?

[The Zehr 103 Ill. 2d 472 and SCR 431 mandatory questions must be asked in every case.]
Do you understand and accept the proposition of law that states **[ask each proposition individually]**:

- that the defendant is presumed innocent of the charge[s] against him or her?
- that before a defendant can be convicted, the State must prove the defendant guilty beyond a reasonable doubt?
- that the defendant is not required to offer any evidence on his or her own behalf?
- **[DO NOT ASK IF OBJECTED TO BY THE DEFENDANT]** and that the defendant's failure to testify cannot be held against him or her?

[These may also be phrased: Do you have any quarrel with the proposition of law that states: …]

Is there anything about you, your background, or your experiences that you think the attorneys might want to know about you?

Will you apply the law as the court states it to be, without regard to your own personal feelings about the law?

Do you know of any reason why you cannot be a fair and impartial juror?

Outline of Possible Topics to Explain to Criminal Jurors After Selection
(detailed explanation follows)

Order of trial

- opening statements
- what evidence is
- you are judges of the facts, you judge the credibility of witnesses
- the judge is the judge of the law…
- if you can't hear…
- objections
- sidebars
- jury instruction conference
- closing arguments
- jury instructions

Keep open minds – wait until after closing arguments before decision making…
Time court begins and ends, breaks
When returning to court, don't linger in the lobby or in the courtroom, go to the jury room so you don't accidentally overhear witnesses and others discussing the case
Don't discuss the case with family, friends, or anyone and not with other jurors until deliberations begin
Don't allow yourselves to be exposed to anything (TV, radio, newspapers, magazines, internet) that has to do with the issues in this case
Report any attempts by anyone to discuss the case with you
Don't go to the scene of the alleged incident **(if the attorneys request the court to so order)**
Encountering parties or the attorneys in the elevator, at lunch, etc. – no appearance of impropriety…
Drinks into the jury box is or is not OK
Assigned seats in the jury box … Jurors buttons or tags to be worn
Responsibility of alternate jurors and treatment of them is no different than any other juror
Where to park and what to do if you get a parking ticket
No cellular telephones during actual jury deliberations
Notes **[read the notes instruction]**

HAVE THE JURORS BEEN SWORN IN?
Detailed Explanation to Criminal Jurors After Selection
[Consider not reading this verbatim, and, instead, use your own words guided by the above outline.]

The trial will begin with "opening statements". That is an opportunity for the attorneys to tell you what they believe the evidence is going to be in the case. It is not a time for making arguments to you, the jury; it is just the chance for the attorneys to familiarize you with what they believe the facts are going to be as the trial proceeds.

The State has the burden to prove the Defendant guilty beyond a reasonable doubt, and the burden to go forward with the evidence. Evidence at a trial comes primarily from the witnesses' testimony from the witness stand and sometimes from physical objects or items, we call them exhibits in court. It is from the witnesses' testimony and the exhibits you are to decide the facts of the case.

In a jury trial, it is sometimes said that the jurors are the judges of the facts and the judge is the judge of the law. It is your job to decide the facts of the case. In that connection, you are to judge the credibility of the witnesses. That means you are to judge the witnesses' believability and to also decide the weight to give to the witnesses' testimony. It is, then, absolutely crucial that you hear what the witnesses have to say. If there is ever a time that you cannot hear a witness, please raise your hand or just speak out and let us know that you cannot hear.

When the State is done presenting its evidence, the State will rest. The Defendant then has the opportunity to present evidence if the Defendant chooses, but I want to emphasize to you that the Defendant has no burden to present any evidence.

During the presentation of evidence and at other times during the trial, you may hear the attorneys make objections. Do not hold that against the attorneys. It is their duty to make appropriate objections. The idea of objections is make sure that only the material and relevant evidence is presented to you, and that the immaterial and irrelevant evidence is kept out of the trial.

When I sustain an objection to a question, you will hear me say something to the effect, "Sustained or the objection is sustained." That means that I agree with the objector. You should disregard the question, and if an answer was already given, you may hear me instruct you to disregard the answer.

When I overrule an objection to a question, you will hear me say something to the effect, "Overruled or the objection is overruled." That means that I disagree with the objector. You may consider the question and the answer, but you should not give the answer any more weight than you would have given it if no objection had been made at all.

From time-to-time, there will be conferences between the attorneys and me that are outside your earshot. Sometimes those conferences will be at a side bar here in the courtroom. Sometimes those conferences will be in my chambers. If the conferences are expected to take any significant length of time, you will be allowed to return to the jury room for your comfort. Please do not get frustrated with those conferences. They, too, are necessary to ensure that only the material and relevant evidence are presented in this trial.

After either side has rested in the presentation of evidence, the other side always has an opportunity to present rebuttal evidence. Rebuttal evidence is usually presented in much shorter time than the evidence presented in the case-in-chief.

After all of the evidence is completed, the attorneys and I will work on the jury instructions. These are the instructions as to the law applicable to the case. You, the jury, will decide the facts of the case and apply the instructions of law that I give you to those facts, and in this way decide the case.

After the jury instruction conference is completed, we will all gather back in the courtroom for closing arguments. In closing arguments, the attorneys may review with you what they believe the evidence has been. But they may go farther. They may ask you to draw inferences from the evidence. They may argue to you about the case, they may try to persuade you, and try to convince you of their particular side.

After the closing arguments are completed, I will read the jury instructions to you. I will send in one packet of those jury instructions into the jury room with you, perhaps along with some exhibits. You may then deliberate your verdict.

I ask that you keep open minds and not be making any decisions or drawing any conclusions not only until after the evidence is completed but until after you have had the benefit of the attorneys' closing arguments.

Generally court begins in the morning at 9:00 a.m. and concludes usually at some point between 4:00 and 5:00 p.m. There is at least a one-hour break for lunch. You are on your own during lunch hour. There is always one break in the morning and one in the afternoon, but because of legal matters in the trial that the attorneys and I will have to attend to, you jurors may have more breaks.

When you return to the courthouse after lunch or at the beginning of a new day, please come directly into the jury room. We don't want you lingering in the lobby or hall area because there is always a chance that various people may be there discussing the case, not realizing that you are jurors.

Don't talk to anyone about the case until after the case is over. This includes your family and friends, and it even includes your fellow jurors. You cannot talk to fellow jurors about the case until the jury deliberations begin after the evidence and arguments have been completed. Don't let yourself be exposed to anything, such as television shows, newspapers, new broadcasts, or people's conversations that have anything to do with this case. If this should happen, it is your duty to report it to me. You will not automatically be excused from jury service, but you will be examined to insure that your ability to serve impartially has not been compromised.

If you should encounter the attorneys or the Defendant in the hallway, on the elevator, or at a restaurant at lunch, you are allowed only to exchange a short greeting, such as "hello". This is to avoid not only an impropriety but also to avoid even the appearance of an impropriety.

[For this particular case, we are asking that you not go to the alleged scene of the crime. That is because all of us, jurors, attorneys, Defendant, and judge, are to have the benefit of the same evidence, and it is not appropriate for some of you to see the location during the trial but not all of us.]

For this next item that I want to tell you about, please know that different judges have different rules. I allow jurors to bring drinks into the jury box. I believe a drink helps some people to stay alert

and attentive. I do ask that you put your coffee, soda, or other beverage into a plain cup. In particular, do not bring into the jury box any cups or cans that advertise products. I believe the bailiffs have plain cups for you in the jury room. And please be careful not to place those drinks in a place they could be easily spilled.

The seats that you are now seated in are your assigned seats throughout the trial. Whenever you return to the courtroom, always return to that particular seat. [You have been given jurors' badges/buttons. You should wear them whenever you are at the courthouse because it allows court and security personnel to readily identify you as a juror.]

It is apparent that ___ jurors have been selected. Only 12 jurors will deliberate. The additional jurors are alternate jurors, who will be called upon if any of the 12 jurors are unable to complete their service. We do not have 2 classes of jurors – the 12 jurors in an elevated status and the alternates in some lesser status. All of you are considered as the jurors in the case, without any distinction. Court personnel will treat you that way and you should treat one another that way.

While you may have cellular telephones in the jury room during the evidentiary portion of the trial, telephones in the jury room are prohibited once the deliberations begin.

Finally, on parking for jurors [and parking tickets]... **[Either explain yourself if you know or have the circuit clerk explain.]**

NOTES

It is probably advisable to read this verbatim rather than paraphrasing it in your own words.

You are instructed that any juror has the right to take and use written notes. Note pads and pens will be provided for your convenience. Please place [your name/juror number] on the envelope that contains the pad and pen. No one will be allowed to look at your notes at any time.

Those of you who take notes during trial may use your notes to refresh your memory during jury deliberations.

Each juror should rely on his or her recollection of the evidence. Just because a juror has taken notes does not necessarily mean that his or her recollection of the evidence is any better or more accurate than the recollection of a juror who did not take notes.

When you are discharged from further service in this case, your notes will be collected by the [deputy/bailiff] and destroyed. Throughout that process, your notes will remain confidential and no one will be allowed to see them.

The bailiffs shall distribute the note pads and pens to the jurors who wish to take notes.

[Have the jurors been sworn?]