PART 5. MOTIONS AND OTHER PRE-TRIAL PROCEEDINGS

Rule 5.1 Motion Practice

(a) Form of Motions. Every motion shall identify in its title or introductory paragraph the relief sought and the section of the Code of Civil Procedure, Code of Criminal Procedure, Supreme Court Rule, or Rule under which the motion is brought. Every motion also shall set forth its factual and legal bases and be accompanied by the citation to any legal authority the moving party desires the Court to consider.

(b) Notice of Hearing of Motions

(1) Notice Required. Except during trial, written notice of the hearing of a motion shall be given to all parties who have appeared and have not been found by the Court to be in default and to all parties whose time to appear has not expired on the date of notice. Notice that additional relief is being sought shall be given in accordance with S. Ct. R. 105.

(2) Content of Notice. In the notice, the party shall provide the title and number of the action, the name of the judge expected to hear the motion, and the time and date when the motion will be presented. The party shall serve a copy of the motion with the notice or state the motion previously has been served. If the motion is for a finding of a default under Rule 5.2(1), either the notice or the motion must inform the defendant that if the defendant is found to be in default at the hearing, the defendant shall not be entitled to notice of further proceedings in the action.

(3) Manner of Service. Notice shall be given in the manner and to the persons described in S. Ct. R 11.

(4) Good Faith Effort to Cooperate in Scheduling; Time of Notice. Whenever reasonably possible, an attorney or SRL setting a matter for hearing shall make a good-faith effort to work with the Court and all opposing attorneys or SRLs to set the hearing at a time and date that is mutually convenient and consistent with the Court's docket. If an attorney or SRL has made this good-faith effort and obtained a mutually convenient time and date acceptable to the Court, the hearing may be set at that time, and notice shall be served accordingly. Unless otherwise allowed by the Court, if an attorney or SRL has made this good-faith effort but an opposing party has not cooperated in determining a mutually agreeable time and date, notice of the hearing must be served at least three days before the hearing. Unless otherwise allowed by the Court, if an attorney or SRL has not made this good-faith effort, notice of the hearing may not be served less than 10 days before the hearing; provided, however, that if the notice is served on any party by regular mail, the notice of hearing must be mailed at least 14 days before the hearing. The filing of a notice of hearing for a hearing less than 10 days after service (or 14 days if a notice is mailed) shall constitute the attorney's or the SRL's certification that he or she has complied with this Rule.

(c) Exhibits to Motions. All exhibits to a motion should be filed with the motion; provided, however, that parties are discouraged from attaching previously filed pleadings as exhibits to motions.

(d) Failure to Call Motions for Hearing. The burden of calling a motion for hearing is on the moving party. If a motion is not called for hearing within 90 days from the date it is filed, the Court may enter an order striking the motion.

(e) Oral Argument. At the discretion of the Court, a motion may be taken by the Court by submission only, with each party submitting briefs and the Court ruling without oral argument or hearing.

Rule 5.2 Specific Motions

(a) Motions for Default

(1) Determination of Default. If a defendant fails to file a written appearance or appear in person or through an attorney in response to a summons returnable on a date certain, the Court may find the defendant in default on the return date without further notice or proceeding. In all other instances, a plaintiff seeking a finding that a defendant is in default for failing to appear, answer, or otherwise plead must file a written motion asking that the defendant be found in default and specifying what other relief, if any, the plaintiff will seek during the hearing on the motion. If the plaintiff seeks entry of a judgment or order (other than an order finding the defendant in default), the plaintiff shall serve a copy of the proposed judgment or order with the motion for default. Service of a notice of motion and motion for default shall be made in accordance with Rule 5.1.

(2) Damages on Default. When a defendant is in default or found in default under Rule 5.2(a)(1), proof of damages may be made by a verified complaint, affidavit, sworn witness testimony, or other proof the Court deems sufficient. Verified complaints and affidavits must be signed by the plaintiff or an agent of the plaintiff, not by the plaintiff's attorney.

(b) *Ex Parte* and Emergency Motions

(1) Filing Required. Every complaint or petition requesting an *ex parte* order appointing a receiver, a temporary restraining order, a preliminary injunction, a domestic violence order, or any other emergency relief shall be filed with the Clerk, if during business hours, before presentation to the Court.

(2) Notice Not Required. Emergency motions and motions that, by law, may be heard *ex parte* may, at the discretion of the Court, be heard without giving notice. Emergency motions deemed by the Court to be a valid emergency shall, when practicable, be given precedence over other matters before the Court.

(3) Notice After Hearing. If a motion is heard without prior notice under this Rule, written notice of the motion, showing the title and number of the action, the name of the judge who heard the motion, the date of the hearing, and the ruling of the Court, shall be served by the attorney or SRL obtaining the order on all parties who have appeared or have not been found by the Court to be in default and on all parties whose time to appear had not expired on the date of the hearing. Proof of service shall be filed with the Clerk within 48 hours after the hearing. Notice shall be given in the manner and to the persons described in S. Ct. R. 11.

(4) Order on Denial. If a motion heard without prior notice is denied, the Court shall spread of record an order of the denial.

(c) Motions for Consolidation of Cases. When the cases are of the same case type, a motion for consolidation shall be presented to the judge to whom the oldest case is assigned. When the cases are not of the same case type, a motion for consolidation shall be brought before the judge assigned to the case with the higher designation. For the purpose of this Rule, L is the highest designation, followed by MR, CH, ED, D, F, TX, MH, P, OP, LM, and SC.

(d) Motions to Continue. No motion to continue shall be allowed for other than good cause. Agreements of counsel as to a motion to continue shall not be binding on the Court. The Court may require affidavits of the parties and attorneys.

(e) Dispositive Motions

(1) Time for Filing. All dispositive motions (*e.g.*, motions to dismiss, motions for judgment on the pleadings, motions for summary judgment) must be filed and brought to argument (pursuant to notice) before the Court no later than 90 days before the assigned trial date. The Court may limit or extend this time in the interests of justice.

(2) Briefs. Briefs in support of dispositive motions shall be filed with the motion. Unless otherwise ordered by the Court, responsive briefs in opposition to dispositive motions shall be filed no later than 28 days after the dispositive motion is filed. Replies to responsive briefs may be allowed in the discretion of the Court and, if allowed, shall be filed within the time allowed by the Court.

Rule 5.3 Civil Case Management Conference

(a) Initial Case Management Conference. An initial case management conference shall be scheduled in all civil cases pursuant to Supreme Court Rules 218 and 904 as follows:

(1) The times and dates shall be prearranged on the schedule of the judges assigned to hear the cases.

(2) The time and date of the initial case management conference shall be affixed to the original pleading and on all copies served on or retained by the parties or indicated in a separate document completed by the Clerk to be delivered to the plaintiff and to be served with the summons on all defendants.

(3) The date of the initial case management conference in proceedings for which a date certain summons is served or for which a notice of hearing is included in the original filing shall be the date set for return or the date set forth in the notice, and the parties shall be notified as set forth above.

(4) The judges of each county shall meet with their respective Clerks and establish case management conference dates at least six months in advance.

(5) All parties or their attorneys shall appear at the initial case management conference. Failure to appear may result in a dismissal or default, as applicable.

(6) At the initial case management conference, the Court shall proceed in accordance with Supreme Court Rules 218 and 904.

(7) Other than as set forth above, initial case management conferences shall be scheduled as follows: L and ED cases: 90-120 days after filing; CH, MR, D, AD, and F cases: 60-90 days after filing; P cases: 9-10 months after filing.

(b) Continuances. All continuances of a case management conference shall be to a date certain for a subsequent case management conference and made pursuant to a written order or docket entry.

Rule 5.4 Discovery Documents

(1) Filing. Pursuant to S. Ct. R. 201(m), and unless otherwise ordered by the Court, depositions, interrogatories, requests to produce or inspect, answers, responses, and other similar discovery documents shall not be filed with the Clerk. This Rule does not apply to requests to admit facts or the genuineness of documents or the answers or responses to those requests. However, if relief is sought concerning any deposition, interrogatory, request for production or inspection, answer to interrogatory, or response, copies of the portion of the deposition, interrogatory, request, answer, or response shall be attached to the request for relief as an exhibit and filed with the Clerk.

(2) Proof of Serving and Answering Discovery Documents. Discovery documents shall be served in accordance with S. Ct. R. 11. Proof of serving or answering discovery documents shall be filed with the Clerk and shall identify the discovery document being served or answered and contain the case title and number, date served, and the sending and receiving parties.

Rule 5.5 Discovery in Criminal Cases. Whenever the Court, pursuant to Supreme Court Rules 411-415, orders a party to a criminal proceeding to disclose facts, materials, exhibits, documents, statements, reports, or other relevant matters to other attorneys or SRLs involved in the case, the following procedure shall be followed:

(a) Disclosure. The party shall disclose the materials ordered by the Court to be disclosed either by providing copies or by arranging a meeting during which the materials will be exhibited to the opposing attorney or SRL; the disclosing attorney or SRL should also prepare a receipt or acknowledgment to be signed by the receiving attorney or SRL indicating those materials supplied to or exhibited to him or her.

(b) Receipt. The attorney or SRL receiving or reviewing the materials shall acknowledge that fact by signing a receipt provided by the disclosing party.

(c) Filing of Receipt. Unless a dispute arises concerning the extent of disclosure, all parties at the time of trial or other disposition of the case shall file the receipt or acknowledgment showing compliance with the Court's order on discovery.

(d) Non-Filing of Discovery Materials. The Clerk shall not accept for filing any exhibits, reports, or other materials in response to discovery orders entered by the Court.

Rule 5.6 Subpoenas

(a) Issuance. On request, the Clerk shall issue a subpoena for testimony or for the production of specified documents, objects, or tangible things. Any testimony or item may be sought that constitutes or contains evidence relating to any matter within the scope of examination permitted under the Supreme Court Rules. No subpoena may be returnable less than 10 days following its date of service. Any subpoena seeking documents shall bear the following legend on the face of the subpoena or conspicuously attached to the subpoena:

> YOU MAY COMPLY WITH THIS SUBPOENA BY MAILING LEGIBLE AND COMPLETE COPIES OF ALL REQUESTED DOCUMENTS TO THE PARTY OR ATTORNEY WHOSE ADDRESS APPEARS BELOW. IF YOU WISH TO COMPLY WITH THIS SUBPOENA BY MAIL, YOU ALSO MUST CERTIFY IN WRITING THAT THE DOCUMENTS MAILED ARE COMPLETE AND ACCURATE AND CONSTITUTE GOOD FAITH COMPLIANCE WITH THE MATERIALS REQUESTED BY THE SUBPOENA. THIS CERTIFICATION CAN BE PROVIDED IN LETTER FORM. **DO NOT MAIL DOCUMENTS MORE THAN TWO BUSINESS DAYS BEFORE THE DATE STATED ON THE SUBPOENA.**

(b) Service. Subpoenas issued under this Rule shall be served in accordance with Supreme Court Rules. A copy of the subpoena and proof of service shall be served on

all parties within 48 hours of issuance. Service of a subpoena by mail may be proved *prima facie* by return receipt showing delivery to the recipient or the recipient's authorized agent by certified or registered mail at least 10 days before the date on which compliance is required and an affidavit setting forth that the mailing was prepaid and addressed to the recipient, restricted delivery, return receipt required, when the subpoena was mailed, and that a check for the witness and mileage fee was provided with the subpoena.

(c) Objection. Before a subpoena's return date, any party may object to the subpoena and, for good cause shown by the objecting party, the Court may quash the subpoena or impose conditions or limitations the Court deems appropriate.

(d) Costs; Additional Copies. The party causing the subpoena to be issued shall be liable to the party subpoenaed for the reasonable costs of copying and any required witness fee and/or mileage. The Court may enter orders as necessary to enforce the payment of these copying costs. Any party may request copies of all materials obtained by a party pursuant to this Rule. Expenses of copying shall be borne by the party requesting copies, and the materials shall be reproduced and forwarded to the requesting party not less than 10 days following receipt of the subpoenaed materials.

(e) Response. The recipient of a subpoena requesting testimony shall appear at the time and place indicated on the subpoena, if payment of the witness fee and mileage has been tendered. The recipient of a subpoena requesting specified documents, objects, or tangible things who has actual or constructive possession or control of the materials shall respond by the date indicated on the subpoena, if payment of the witness fee and mileage has been tendered, either in person or by mail with appropriate certification.

Rule 5.7 Written Draft Orders. When the Court enters a ruling in any case, it may require that a written order be submitted through e-filing or otherwise, and the attorney or SRL directed to submit the order shall do so within 30 days or other time established by the Court. Before submitting the order to the Court, the attorney or SRL preparing the order shall first tender the proposed order to all other attorneys and SRLs of record. If the parties do not agree as to the form of the order, the Court shall decide the issue after hearing. Approval as to form shall not be construed as approval as to substance, and the Court may enter the order even if approval is withheld. The attorney or SRL preparing the order shall place his or her name, address, and telephone number at the lower left portion of the last page of the order. An agreed order should be so designated.

Rule 5.8 Settlement Conference. Within 30 days of discovery being completed in a civil case, it is recommended that a settlement conference be conducted with the Court to explore the possibility of settlement and to determine if the issues can be narrowed. All settlement conferences shall be undertaken pursuant to S. Ct. R. 63A(5)(c). When a settlement conference is to be conducted, each attorney or SRL shall prepare a written memorandum setting forth the relevant facts of the case, the party's settlement position, and the bases for that position and deliver a copy of the memorandum to the Court at least seven days before the conference. Unless the parties agree that the memoranda may be submitted to the Court confidentially, the party preparing a memorandum shall serve the

memorandum on all other attorneys or SRLs but shall not file the memorandum with the Clerk. Unless specifically excused by the Court, the attendance of parties with the ability to meaningfully negotiate toward a settlement agreement on behalf of a party and, if successful, to bind that party to an enforceable settlement agreement is required. The Court may order the trial attorneys, the parties, and/or a representative of a defendant's insurer to attend the settlement conference, in person or by telephone or video conference. Because parties participating in a settlement conference may learn a judge's thoughts and impressions about the case, any party who agrees to participate in a settlement conference under this Rule waives the right to substitute the judge participating in the conference as a matter of right. All parties, however, retain the right to seek to substitute the judge for cause.

Rule 5.9 Final Pretrial Conference

(a) Required Documents. When a final pretrial conference is scheduled, the attorneys for each of the parties and each SRL shall file and serve pretrial documents as required by the Court at least 10 days before the final pretrial conference. Unless otherwise ordered, the pretrial documents shall include the following:

(1) exhibit lists;

(2) *voir dire* questions;

(3) jury instructions;

(4) special interrogatories;

(5) trial memoranda;

(6) statements of the case setting forth the time and place of the alleged occurrence, a brief description the occurrence, the names of the parties and their attorneys, and a list of witnesses the parties expect to call;

(7) motions *in limine* (to be heard at the final pretrial conference); and

(8) evidence deposition transcripts and objections.

(b) Settlement Before Trial. If a case settles before a scheduled final pretrial conference or before trial, the attorneys for the parties and each SRL shall notify the Court of the settlement as soon as reasonably possible.

(c) Attendance at Final Pretrial Conference. Unless excused by the Court, the following representatives shall attend the final pretrial conference:

(1) trial attorneys for each party;

(2) all SRLs;

(3) the plaintiff(s); and

(4) a representative of the defendant(s) who has authority to settle the case.

(d) Exhibits. At the final pretrial conference or at any other time as may be designated by the Court, the Court may direct the parties to produce all exhibits they expect to offer in evidence. Each of the exhibits shall be marked for identification by the court reporter, clerk, or attorneys, as the Court directs. The parties shall then stipulate as to the exhibits to which there are no objections, and those exhibits shall be admitted in evidence without the necessity of further foundation.

Rule 5.10 Trial Continuances

(a) Requests for Continuances. All motions to continue a trial shall fully comply with this Rule and 735 ILCS 5/2-1007, S. Ct. R. 231, and 725 ILCS 5/114-4, as applicable. The motion shall be filed, and written notice given to all attorneys and SRLs of record, at least seven days before the trial date and set for hearing at least four days before the trial date. If the motion is based on a conflicting setting, the motion shall be accompanied by an affidavit of the attorney setting forth the name of the other case, the name of the judge before whom the case in pending, the time and place of the conflicting setting, and the date the conflicting setting was set. Even if a motion to continue a jury trial is agreed or uncontested, a continuance will be allowed only when justice otherwise would be denied. An agreed or stipulated motion to continue a bench trial will only be allowed on good cause shown and, whenever practicable, an agreed or stipulated motion to continue a bench trial must be heard at least four days before the trial is to begin. Only the Court can grant a motion to continue a trial.

(b) Conditions; Sanctions. The Court, on its motion or on motion of the party not seeking the continuance, may condition a continuance on the moving party's payment of juror fees, witness fees, attorneys' fees, lost wages, and/or other reasonable expenses associated with continuing the trial. If justice requires that a trial be continued because of the conduct of the non-moving party, the Court may assess sanctions against the non-moving party under S. Ct. R. 137 and/or S. Ct. R. 219. This Rule does not in any way limit the Court's contempt power.

Rule 5.11 Foreclosure Sales

(a) Officer to Conduct Sales. All judgments directing the sale of real estate shall designate the sheriff or judicial officer approved by the Court as the officer to conduct the sale. The sheriff or judicial officer is hereby authorized to retain the services of an auctioneer and assess the costs of the auctioneer to the plaintiff.

(b) Services of Plaintiff. In all real estate sales in foreclosure, the plaintiff or attorney for the plaintiff, unless otherwise directed, shall prepare the appropriate documents and otherwise aid the Court and sheriff in carrying out the sale, which documents and services shall include (but not be limited to) the following:

(1) Preparation of the publication notice for sale and arranging for publication of the notice as required by law;

(2) Preparation of the sheriff's report of sale to be executed by the sheriff as well as the sheriff's deed or deeds, if needed;

(3) Preparation of the certificate of sale in duplicate to be executed by the sheriff; and

(4) Preparation of orders approving the report of sale for entry by the Court, as well as a memorandum of judgment when applicable.

(c) Other Services by Plaintiff. In addition to the services above mentioned, the plaintiff or attorney for the plaintiff shall, before the date of sale, supply the sheriff with:

(1) A certified copy of the judgment directing sale;

(2) A certificate of publication of the notice of sale; and

(3) A certificate showing copies of the notices of sale have been mailed to parties to the action, when applicable.

(d) Record of Fees and Commissions on Sales. The sheriff shall prepare and keep on file, open to inspection by the Court and others, a full and complete record of all fees and commissions received for sales conducted by the sheriff under authority of the Court, which record shall show the dates and amounts received and the title and number of each case.

Rule 5.12 Warnings on Post-Judgment Notices. Notices of hearings to discover assets, petitions for adjudication of contempt, and any other hearing during which a warrant of arrest may issue for a party's failure to appear after receipt of notice shall, in addition to the time, date, and place of hearing, include the following words in bold type or underlined: "Your failure to appear at this hearing may result in the issuance of a warrant for your arrest."

Rule 5.13 Dismissal for Want of Prosecution

(a) By a Defendant. If a defendant or defendant's attorney appears on a return date or at the time of the trial and the plaintiff or the plaintiff's attorney fails to appear, the Court may dismiss the action for want of prosecution. If the Court determines it

appropriate to reinstate a complaint previously dismissed or vacate any dismissal or default judgment, the Court may impose sanctions or condition of the reinstatement or vacation on appropriate terms.

(b) By the Court. All civil cases in which no appeal is pending and in which no motion or order has been made for nine months, or in small claims after six months, may be summarily dismissed by the Court for want of prosecution. The Clerk shall give notice of the pendency of dismissal not less than 30 days before the date set for dismissal. After dismissal, the Clerk shall give notice of the dismissal by mail.