M.R. 3140

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

Order entered July 17, 2020.

(Deleted material is struck through, and new material is underscored.)

Effective immediately, Illinois Supreme Court Rule 139 is adopted, and Rules 101 and 181 are amended, as follows.

New Rule 139

Rule 139. Practice and Procedure in Eviction Cases.

(a) Applicability of the Rule. This Rule supplements, but does not replace, the requirements set forth in article IX of the Code of Civil Procedure (735 ILCS 5/9-101 *et seq.*) and applies only to eviction actions filed on or after the effective date of July 17, 2020.

(b) Supporting Documents for Eviction Complaints.

(1) At the time of filing, the plaintiff shall attach a copy of the eviction notice or demand upon which the action is based, including any affidavits or other proof of service, to the eviction complaint. If the plaintiff does not have the eviction notice or demand, the plaintiff may attach an affidavit instead, using the standardized form approved for use by the Illinois Supreme Court.

(2) When an eviction action is based on a breach of a written lease and brought pursuant to section 9-210 of the Code of Civil Procedure (735 ILCS 5/9-210), the plaintiff shall also attach a copy of the lease, or the relevant portions of the lease, to the eviction complaint at the time of filing. If the plaintiff does not have the lease or if there is no written lease, the plaintiff may attach an affidavit instead, using the standardized form approved for use by the Illinois Supreme Court.

Adopted July 17, 2020, eff. immediately.

Committee Comments
(July 17, 2020)

Article IX of the Code of Civil Procedure does not require that a plaintiff include all of the facts necessary to establish a *prima facie* case in the eviction complaint. Instead, it requires that an eviction complaint state that the plaintiff is "entitled to the possession of such premises (describing the same with reasonable certainty), and that the defendant (naming the defendant) unlawfully withholds the possession thereof from him, her or them." 735 ILCS 5/9-106 (West 2018).

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SUPREME COURT
CLERK

The factual basis for a termination of tenancy or lease, or authority for a demand for possession, is detailed in the "notice of termination" or "demand for possession" served on the tenant prior to the filing of the eviction action. Additionally, demands and notices must provide language indicating termination of tenancy and, when applicable, provide for a cure period. The notices and demands provide tenants with a basis for understanding why their landlords are seeking to evict them, and ways to cure the violations, when applicable.

However, although a demand for possession or a notice of termination is almost always a prerequisite to the filing of an eviction action, these documents, generally, have not been attached to eviction complaints. Similarly, although the breach of a lease term may form the basis for a termination notice and eviction complaint, the lease, or relevant portion of the lease, also rarely has been attached to eviction complaints.

Section 2-606 of the Code of Civil Procedure does require that, "[i]f a claim or defense is founded upon a written instrument, a copy thereof, or of so much of the same as is relevant, must be attached to the pleading as an exhibit or recited therein, unless the pleader attaches to his or her pleading an affidavit stating facts showing that the instrument is not accessible to him or her. In pleading any written instrument a copy thereof may be attached to the pleading as an exhibit. In either case the exhibit constitutes a part of the pleading for all purposes." 735 ILCS 5/2-606 (West 2018). However, section 2-606 of the Code of Civil Procedure, generally, has not been applied to eviction actions because the pleading requirements described in section 9-106 do not expressly require that any documents be attached to the complaint. Paragraph (b) supplements the complaint requirements of the eviction statute in a manner consistent with section 2-606.

The requirements of paragraph (b), that a copy of the predicate written demand, termination notice (including affidavits or proof of service), and, where applicable, the relevant lease provisions be attached to the complaint, allow courts and tenants to have these documents upon the initiation of eviction actions and assure that the documents are available in court for use by both landlords and tenants for more efficient and just resolution of these cases.

Amended Rule 101

Rule 101. Summons and Original Process—Form and Issuance

(a) General. The summons shall be issued under the seal of the court, identifying the name of the clerk. The summons shall clearly identify the date it is issued, shall be directed to each defendant, and shall bear the information required by Rule 131(d) for the plaintiff's attorney or the plaintiff if not represented by an attorney. All summons issued in civil cases in Illinois must contain the following language:

> E-filing is now mandatory for documents in civil cases with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit http://efile.illinoiscourts.gov/service-providers.htm to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit http://www.illinoiscourts.gov/FAQ/gethelp.asp, or talk with your local circuit clerk's office.

(b) Summons Requiring Appearance on Specified Day.

(1) In an action for money not in excess of $50,000, exclusive of interest and costs, or in any action subject to mandatory arbitration where local rule prescribes a specific date for

appearance, the summons shall require each defendant to appear on a day specified in the summons not less than 21 or more than 40 days after the issuance of the summons (see Rule 181(b)), and shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(2) In any action for eviction ~~forcible detainer~~ or for recovery of possession of tangible personal property, the summons shall be in the same form, but shall require each defendant to appear on a day specified in the summons not less than 7 or more than 40 days after the issuance of summons.

(3) If service is to be made under section 2-208 of the Code of Civil Procedure the return day shall be not less than 40 days or more than 60 days after the issuance of summons, and no default shall be taken until the expiration of 30 days after service.

(c) Summons in Certain Other Cases in Which Specific Date for Appearance is Required. In all proceedings in which the form of process is not otherwise prescribed and in which a specific date for appearance is required by statute or by rules of court, the form of summons shall conform as nearly as may be to the form set forth in paragraph (b) hereof.

(d) Summons Requiring Appearance Within 30 Days After Service. In all other cases the summons shall require each defendant to file his answer or otherwise file his appearance within 30 days after service, exclusive of the day of service (see Rule 181(a)), and shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(e) Summons in Cases under the Illinois Marriage and Dissolution of Marriage Act. In all proceedings under the Illinois Marriage and Dissolution of Marriage Act, the summons shall include a notice on its reverse side referring to a dissolution action stay being in effect on service of summons, and shall state that any person who fails to obey a dissolution action stay may be subject to punishment for contempt, and shall include language:

(1) restraining both parties from physically abusing, harassing, intimidating, striking, or interfering with the personal liberty of the other party or the minor children of either party; and

(2) restraining both parties from concealing a minor child of either party from the child's other parent. The restraint provided in this subsection (e) does not operate to make unavailable any of the remedies provided in the Illinois Domestic Violence Act of 1986.

(f) Waiver of Service of Summons. In all cases in which a plaintiff notifies a defendant of the commencement of an action and requests that the defendant waive service of summons under section 2-213 of the Code of Civil Procedure, the request shall be in writing prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(g) Use of Wrong Form of Summons. The use of the wrong form of summons shall not affect the jurisdiction of the court.

Amended effective August 3, 1970, July 1, 1971, and September 1, 1974; amended May 28, 1982, effective July 1, 1982; amended October 30, 1992, effective November 15, 1992; amended January 20, 1993, effective immediately; amended December 30, 1993, effective January 1, 1994; amended

February 1, 1996, effective immediately; amended May 30, 2008, effective immediately; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended Aug. 16, 2017, eff. immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended June 26, 2018, eff. July 1, 2018; amended July 19, 2018, eff. immediately; amended Aug. 22, 2018, eff. immediately; amended July 17, 2020, eff. immediately.

Committee Comments
(Revised September 1, 1974)

As adopted in 1967, Rule 101 was derived from former Rule 2, with changes in paragraph (b). Paragraph (b) was inserted in former Rule 2, effective January 1, 1964, to provide, for relatively small cases, the form of summons that had been in use in the Municipal Court of Chicago prior to that date. In cases up to $10,000, the time was changed to not less than 21 or more than 40 days. Effective August 3, 1970, the $10,000 limit was changed to $15,000. The appearance day in small claims is covered by Rule 283.

The appearance day in forcible entry and detainer cases was left at not less than seven or more than 40 days. To conform the practice to the requirements of notice in actions seeking restoration of property wrongfully detained, set forth by the Supreme Court of the United States in *Fuentes v. Shevin* (1972), 407 U.S. 67, subparagraph (b)(2) of the rule was amended in 1974 to provide for a summons in such cases returnable on a day specified in the summons, not less than seven or more than 40 days from issuance, as in forcible entry and detainer cases. Under the rule as amended, independent of the statutory remedy of replevin, a party seeking return of personal property may proceed in an action in the nature of an action in detinue at common law, and serve process in the manner provided.

Subparagraph (b)(3), added to former Rule 2 in 1964 and carried forward into Rule 101 in 1967, set 40 days as the return day on service made under section 16 of the Civil Practice Act. Effective July 1, 1971, this provision was amended to substitute for "40 days" the somewhat more flexible provision "not less than 40 days or more than 60 days."

The provision of paragraph (b) of this rule permitting specific instructions under the heading "Notice to Defendant" has probably not been adequately implemented by the judges of the trial courts. It is the committee's view that the summons should give as much specific information to the defendant as possible. For instance, the particular court room number and place of holding court ought to be given. Instructions regarding the method of entering an appearance and a statement whether an answer must be filed with the appearance, or the date for filing an answer after an appearance, can be stated in the "Notice to Defendant." Rule 181, relating to appearance, expressly recognizes that the "Notice to Defendant" under Rule 101(b) is controlling.

In 1974, paragraph (d) was amended to insert in the specimen summons reference to the fact that a copy of the complaint is attached, thus conforming the language of the summons under paragraph (d) in this respect to the language in the summons under paragraph (b).

Amended Rule 181

Rule 181. Appearances—Answers—Motions

(a) When Summons Requires Appearance Within 30 Days After Service. When the summons requires appearance within 30 days after service, exclusive of the day of service (see Rule 101(d)), the 30-day period shall be computed from the day the copy of the summons is left with the person designated by law and not from the day a copy is mailed, in case mailing is also required. The defendant may make his or her appearance by filing a motion within the 30-day period, in which instance an answer or another appropriate motion shall be filed within the time the court directs in the order disposing of the motion. If the defendant's appearance is made in some other manner, nevertheless his or her answer or appropriate motion shall be filed on or before the last day on which he or she was required to appear.

(b) When Summons Requires Appearance on Specified Day.

(1) *Actions for Money.* Unless the "Notice to Defendant" (see Rule 101(b)) provides otherwise, an appearance in a civil action for money in which the summons requires appearance on a specified day may be made by appearing in person or by attorney at the time and place specified in the summons and making the appearance known to the court, or before the time specified for appearance by filing a written appearance, answer, or motion, in person or by attorney. When a defendant appears in open court, the court shall require him to enter an appearance in writing. When an appearance is made in writing otherwise than by filing an answer or motion, the defendant shall be allowed 10 days after the day for appearance within which to file an answer or motion, unless the court, by rule or order, otherwise directs.

(2) *Eviction ~~Forcible Detainer~~ Actions.* In actions for eviction ~~forcible detainer~~ (see Rule 101(b)), the defendant must appear at the time and place specified in the summons. If the defendant appears, he or she need not file an answer unless ordered by the court; and when no answer is ordered, the allegations of the complaint will be deemed denied, and any defense may be proved as if it were specifically pleaded.

(3) *Small Claims.* Appearances in small claims (actions for money not in excess of $10,000) are governed by Rule 286.

Amended October 21, 1969, effective January 1, 1970; amended December 3, 1996, effective January 1, 1997; amended February 10, 2006, effective immediately; amended Jan. 4, 2013, eff. immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended July 17, 2020, eff. immediately.

Committee Comments

This rule consists of paragraphs (1) and (2) of former Rule 8 without change of substance.