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A useful process for local counsel to master

When it becomes necessary to either obtain the deposition of an Illinois resident for a state case pending in another jurisdiction or to obtain the deposition of a person residing in another jurisdiction for a state court case pending in Illinois, it is important to have a road map for how to proceed.

Mastering the steps associated with obtaining a deposition in these circumstances will prove useful whether you are acting as local counsel for another firm or are working with local counsel to obtain the subpoena.

Let's examine the procedure for obtaining a deposition subpoena when the matter is pending in another state, but the deponent is located in Illinois. A similar process can be used when the subpoena is seeking the production of documents in the possession of an Illinois resident or company.

Illinois Supreme Court Rule 204(b) is the rule which authorizes a party to take the deposition of an Illinois resident in support of a case pending in a foreign jurisdiction. Rule 204(b) provides that any person authorized by the laws of another state to take any deposition in Illinois, with or without a commission, in any action pending in a court of that state may petition the circuit court in the county in which the deponent resides, is employed or transacts business in person or is found.

A commission from the foreign state may be used. However, as Rule 204 makes clear, it is not

required for the subpoena to be validly issued in Illinois.

To obtain a subpoena in Cook County, there are five or six documents that are generally required to be included in the filing:

- A civil cover sheet
- A petition for a subpoena to compel a deposition in aid of a case pending in another state
- A draft order granting the petition
- The subpoena and any attached document rider
- The notice of deposition (if the deposition will be videotaped, the notice should so state)
- Commission to take the deposition from the court in the state where the case is pending (this is optional).

Some judges require a court appearance and hearing, but others will simply issue the subpoena as a routine matter.

The petition seeking the subpoena should include information about where the underlying action is pending, the case name and number and a description of the claims asserted in the case. If possible, a copy of the out-of-state complaint or relevant pleading should be attached to the petition as an exhibit.

The petition should also include information about where in Illinois the deponent is living or doing business and a short paragraph regarding why the petitioner seeks to take the deposition of the Illinois deponent.

Additionally, the petition should indicate where and when



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the deposition is proposed to take place. The subpoena and, if relevant, the document rider should be attached to the petition as an exhibit.

When planning a deposition date, it is important to build in sufficient time to obtain the order authorizing the subpoena, perfecting service of the subpoena on the witness and obtaining from that witness any relevant documents.

It can take anywhere from a few days to a week or two to obtain a ruling on the petition. It may take up to a month to obtain responsive documents.

If the deponent lives in an Illinois county other than Cook County, it is best to both check the relevant court's website to obtain the proper form for the subpoena and also talk to the

clerk to see if there are any unique or local requirements of that court.

When it is necessary to take the deposition of an out-of-state deponent for a state court case that is pending in Illinois, it will be necessary to review the relevant court's rules to understand the proper procedure. However, in most cases, it will be necessary to open an action in the foreign state and petition for a subpoena, which can often be done most effectively by local counsel.

The foreign state likely will require a commission from the Illinois court. Cook County has a standard form (CCG 0038 A) which can be used to obtain a commission.

The commission will be stamped and issued by the court clerk. The original usually must be sent to the local counsel to file with the petition to obtain the subpoena. Under Illinois Supreme Court Rule 205(c), a commission to take a deposition can be issued by the court clerk without providing notice.

By understanding the procedures for obtaining the deposition of an Illinois deponent when a case is pending in another state court, or for obtaining the deposition of an out-of-state deponent when a case is pending in Illinois state court, you will be well-equipped to either assist in a case by acting as local counsel or to work efficiently with local counsel to accomplish the client's needs.