



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB1893

Introduced 2/25/2005, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-402

from Ch. 110, par. 2-402

Amends the Code of Civil Procedure. Provides that a summons for discovery issued by the clerk of the circuit court shall be served on each person or entity named as a respondent in discovery. Provides that no extension of the 6 month period for making a respondent into a defendant shall be permitted unless the plaintiff can show a failure or refusal on the part of the respondent to comply with timely filed discovery or for good cause shown. Adds a Summons for Discovery Form.

LRB094 08989 LCB 39210 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by
5 changing Section 2-402 as follows:

6 (735 ILCS 5/2-402) (from Ch. 110, par. 2-402)

7 (Text of Section WITH the changes made by P.A. 89-7, which
8 has been held unconstitutional)

9 Sec. 2-402. Respondents in discovery. The plaintiff in any
10 civil action may designate as respondents in discovery in his
11 or her pleading those individuals or other entities, other than
12 the named defendants, believed by the plaintiff to have
13 information essential to the determination of who should
14 properly be named as additional defendants in the action.
15 Fictitious defendants may not be named in a complaint in order
16 to designate respondents in discovery.

17 Persons or entities so named as respondents in discovery
18 shall be required to respond to discovery by the plaintiff in
19 the same manner as are defendants and may, on motion of the
20 plaintiff, be added as defendants if the evidence discloses the
21 existence of probable cause for such action.

22 A person or entity named a respondent in discovery may upon
23 his or her own motion be made a defendant in the action, in
24 which case the provisions of this Section are no longer
25 applicable to that person.

26 A copy of the complaint and a summons for discovery issued
27 by the clerk of the circuit court shall be served on each
28 person or entity named as a respondent in discovery.

29 Each respondent in discovery shall be paid expenses and
30 fees as provided for witnesses.

31 A person or entity named as a respondent in discovery in
32 any civil action may be made a defendant in the same action at

1 any time within 6 months after being named as a respondent in
 2 discovery, even though the time during which an action may
 3 otherwise be initiated against him or her may have expired
 4 during such 6 month period. No extensions of this 6 month
 5 period shall be permitted unless the plaintiff can show a
 6 failure or refusal on the part of the respondent to comply with
 7 timely filed discovery or for good cause shown.

8 The plaintiff shall serve upon the respondent or
 9 respondents a copy of the complaint together with a summons in
 10 a form substantially as follows:

11 "STATE OF ILLINOIS

12 COUNTY OF

13 IN THE CIRCUIT COURT OF COUNTY, ILLINOIS

14 COUNTY DEPARTMENT, LAW DIVISION

15 (or, In the Circuit Court of the Judicial Circuit)

16

17 Plaintiff(s),

18 v.

No.

19

20,

21 Defendant(s),

22 and

PLEASE SERVE:

23

24,

25 Respondent(s) in Discovery.

26 SUMMONS FOR DISCOVERY

27 TO RESPONDENT IN DISCOVERY:

28 YOU ARE HEREBY NOTIFIED that on, 20.....,
 29 a complaint, a copy of which is attached, was filed in the

1 above Court naming you as a Respondent in Discovery. Pursuant
 2 to the Illinois Code of Civil Procedure Section 2-402 and
 3 Supreme Court Rules 201 et. seq., and/or Court Order entered on
 4, the above named
 5 Plaintiff(s) are authorized to proceed with the discovery of
 6 the named Respondent(s) in Discovery.

7 YOU ARE SUMMONED AND COMMANDED to appear for deposition,
 8 before a notary public (answer the attached written
 9 interrogatories), (respond to the attached request to
 10 produce), (or other appropriate discovery tool).

11 We are scheduled to take the oral discovery deposition of the
 12 above named Respondent,, on
 13, 20..., at the hour of
 14 a.m./p.m., at the office
 15, Illinois, in
 16 accordance with the rules and provisions of this Court. Witness
 17 and mileage fees in the amount of are
 18 attached (or)

19 (serve the following interrogatories, request to produce, or
 20 other appropriate discovery tool upon Respondent,
 21 to be answered under oath by
 22 Respondent,, and delivered to the
 23 office of, Illinois, within
 24 28 days from date of service).

25 TO THE OFFICER/SPECIAL PROCESS SERVER:

26 This summons must be returned by the officer or other
 27 person to whom it was given for service, with endorsement or
 28 affidavit of service and fees and an endorsement or affidavit
 29 of payment to the Respondent of witness and mileage fees, if
 30 any, immediately after service. If service cannot be made, this
 31 summons shall be returned so endorsed.

1 WITNESS,

2

3 Clerk of Court

4 Date of Service:,20...

5 (To be inserted by officer on copy left
6 with Respondent or other person)

7 Attorney No.

8 Name:

9 Attorney for:

10 Address:

11 City/State/Zip:

12 Telephone:".

13 This amendatory Act of 1995 applies to causes of action
14 filed on or after its effective date.

15 This amendatory Act of the 94th General Assembly applies to
16 causes of action filed on or after its effective date.

17 (Source: P.A. 89-7, eff. 3-9-95.)

18 (Text of Section WITHOUT the changes made by P.A. 89-7,
19 which has been held unconstitutional)

20 Sec. 2-402. Respondents in discovery. The plaintiff in any
21 civil action may designate as respondents in discovery in his
22 or her pleading those individuals or other entities, other than
23 the named defendants, believed by the plaintiff to have
24 information essential to the determination of who should
25 properly be named as additional defendants in the action.

26 Persons or entities so named as respondents in discovery
27 shall be required to respond to discovery by the plaintiff in
28 the same manner as are defendants and may, on motion of the
29 plaintiff, be added as defendants if the evidence discloses the
30 existence of probable cause for such action.

31 A person or entity named a respondent in discovery may upon
32 his or her own motion be made a defendant in the action, in

1 which case the provisions of this Section are no longer
2 applicable to that person.

3 A copy of the complaint and a summons for discovery issued
4 by the clerk of the circuit court shall be served on each
5 person or entity named as a respondent in discovery.

6 Each respondent in discovery shall be paid expenses and
7 fees as provided for witnesses.

8 A person or entity named as a respondent in discovery in
9 any civil action may be made a defendant in the same action at
10 any time within 6 months after being named as a respondent in
11 discovery, even though the time during which an action may
12 otherwise be initiated against him or her may have expired
13 during such 6 month period. No extension of this 6 month period
14 shall be permitted unless the plaintiff can show a failure or
15 refusal on the part of the respondent to comply with timely
16 filed discovery or for good cause shown.

17 The plaintiff shall serve upon the respondent or
18 respondents a copy of the complaint together with a summons in
19 a form substantially as follows:

20 "STATE OF ILLINOIS

21 COUNTY OF

22 IN THE CIRCUIT COURT OF COUNTY, ILLINOIS

23 COUNTY DEPARTMENT, LAW DIVISION

24 (or, In the Circuit Court of the Judicial Circuit)

25

26 Plaintiff(s),

27 v.

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PLEASE SERVE:

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9 Supreme Court Rules 201 et. seq., and/or Court Order entered on
10, the above named
11 Plaintiff(s) are authorized to proceed with the discovery of
12 the named Respondent(s) in Discovery.

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17 We are scheduled to take the oral discovery deposition of the
18 above named Respondent,, on
19, 20..., at the hour of
20 a.m./p.m., at the office
21, Illinois, in
22 accordance with the rules and provisions of this Court. Witness
23 and mileage fees in the amount of are
24 attached (or)

25 (serve the following interrogatories, request to produce, or
26 other appropriate discovery tool upon Respondent,
27 to be answered under oath by
28 Respondent,, and delivered to the
29 office of, Illinois, within
30 28 days from date of service).

1 TO THE OFFICER/SPECIAL PROCESS SERVER:

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4 affidavit of service and fees and an endorsement or affidavit
5 of payment to the Respondent of witness and mileage fees, if
6 any, immediately after service. If service cannot be made, this
7 summons shall be returned so endorsed.

8 WITNESS,

9

10 Clerk of Court

11 Date of Service:, 20...

12 (To be inserted by officer on copy left
13 with Respondent or other person)

14 Attorney No.

15 Name:

16 Attorney for:

17 Address:

18 City/State/Zip:

19 Telephone:".

20 This amendatory Act of the 94th General Assembly applies to
21 causes of action filed on or after its effective date.

22 (Source: P.A. 86-483.)