

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT**

**McHENRY COUNTY, ILLINOIS**

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17 LA 377
	)	
THE LAW OFFICE OF THOMAS J.	)	
POPOVICH, P.C., and HANS MAST	)	
	)	
Defendants.	)	

**PLAINTIFF'S 2ND AMENDED MOTION TO EXCLUDE THE DEPOSITION OF  
 DEFENDANT HANS MAST TAKEN IN VIOLATION OF SUPREME COURT RULE 206  
 h(2) REMOTE ELECTRONIC MEANS DEPOSITIONS and ORDERS OF THE  
 ILLINOIS SUPREME COURT In re: ILLINOIS COURTS RESPONSE to COVID-19  
 EMERGENCY/IMPACT ON DISCOVERY M.R.30370 CORRECTED ORDER APRIL  
 29, 2020 and M.R.30370 AMENDED ORDER JUNE 4, 2020 and to GRANT LEAVE  
 TO TAKE THE DISCOVERY DEPOSITION OF DEFENDANT HANS MAST**

Now Comes Plaintiff Paul Dulberg, by and through his attorney Alphonse A.  
 Talarico, and for his Motion To Exclude the Discovery Deposition of Defendant Hans  
 Mast taken in violation of Supreme Court Rule 206 h(2) and Supreme Court Orders  
 states as follows:

**RELEVANT FACTS**

1) On June 25, 2020 the Discovery Deposition of Defendant Hans Mast was taken  
 pursuant to a non-filed notice (violation waived) but all 15 exhibits and the questioning

of deponent Hans Mast based upon all 15 exhibits violated the Rules and Orders of the Illinois Supreme Court.

2) Plaintiff first learned of the aforesaid violations during a hearing on April 27, 2022 when the Honorable Judge Thomas A. Meyer was sent the hard copy of said deposition without any exhibits from Defendants' Attorney's office and the exhibits 1-11 and 13-15 from the Plaintiff's current Attorney's office. (Please see Report of Proceedings April 27, 2022 page 2 line 23-24 and page 4 line 7-9 which is part of the Clerk's online file)

3) Plaintiff's current Attorney objected to the use of the discovery deposition of Defendant Hans Mast during the hearing because there's exhibit(s) missing. (Please see Report of Proceedings April 27, 2022 page 31 line 21-24 which is part of the Clerk's online file)

4) Plaintiff's current Attorney more completely explained to the Court that the discovery deposition of Hans Mast in all its variations was missing exhibit 12. (Please see Report of Proceedings April 27, 2022 page 36 line 19-24 to page 37 line 1-3 which is part of the Clerk's online file)

5) Thereafter this Honorable Court asked Defendants' Attorney whether he had exhibit 12. (Please see Report of Proceedings April 27, 2022 page 37 line 19-20 which is part of the Clerk's online file)

6) The Attorney for the Defendants responded "I may. I don't know. I haven't look for it." (Please see Report of Proceedings April 27, 2022 page 37 line 20-21 which is part of the Clerk's online file)



7) This Honorable Court ordered Defendants' Attorney to produce exhibit 12 if he has it. (Please see Report of Proceedings April 27, 2022 page 39 line 16-21 which is part of the Clerk's online file)

8) On April 28, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney's office with a link at <https://www.dropbox.com> to access Mast Dep Ex.12. (Please see Plaintiff's Exhibit #1 attached)

9) Plaintiff's current Attorney noticed that the label purporting to be authentic on Hans Mast's discovery deposition exhibit 12 seemed not to match the other 14 exhibit label as to fonts, shape, color, and DEPONENT's NAME (Hans Mist not Hans Mast).

10) On May 18, 2022 Plaintiff's current Attorney caused to be served upon Certified Shorthand Reporter Barbara G. Smith a Subpoena For Records in which she was requested to produce "The original discovery deposition of Hans Mast taken in this matter on June 25, 2020 including all pages, all indexes, all exhibits and all stenographic/shorthand notes."

11) Certified Shorthand Reporter Barbara G. Smith's complete response submitted on a flash drive was received on June 16, 2022.

12) Contained on the flash drive is a file titled HPSCANS and therein were a series of communications and handwritten notes between the Certified Shorthand Reporter Barbara G. Smith and Noelle Kappes of US Legal Support and Plaintiff's former attorney Julia C. Williams clearly indicating that Hans Mast discovery deposition taken June 25, 2020 did not have exhibit 12 sent before the deposition nor uploaded during the deposition and said exhibit was never in the Certified Shorthand Reporter Barbara G. Smith's possession before, during or after the deposition was taken, transcribed or

submitted for transmission. (Please see Plaintiff's Group Exhibit #2 Barbara G. Smith job papers0001.pdf and job papers0002.pdf attached)

13) Thereafter, on June 21, 2022 Plaintiff's current Attorney sent Hans Mast's discovery deposition taken on June 25, 2020 with exhibits 1-11 and 13-15, that were located in Plaintiff's former Attorney Julia C. Williams' electronic file with exhibit 12 received from Defendants' Attorney's office on April 28, 2022 with Barbara G. Smith's flash drive to Plaintiff's S. Ct. Rule 213(f)(3) expert Robin D. Williams, MFS, MS, D-BFDE Board Certified, Omni Document Examinations for analysis.

14) On July 11, 2022 Plaintiff's current Attorney received Robin D. Williams's Report of Findings concluding that the label on exhibit 12 did not come from the same group or batch of labels identified as exhibits 1-11 and 13-15. (Please see Plaintiff's Exhibit #3 Robin D. Williams Report of Findings July 11, 2022 attached)

15) On July 11, 2022 Plaintiff's current Attorney received an email from Defendants' Attorney stating that the Hans **MIST EMPHASIS ADDED** exhibit 12 alleged to be part of Defendant Hans Mast's discovery deposition was received separately from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 14, 2020 while the Deposition and Exhibits 1-11 and 13-15 were received from U.S. Legal Support by both his office and Plaintiff's former Attorney Julia Williams on July 10, 2020. (Please see Plaintiff's Exhibit #4 attached)

#### **LAW AND ORDER(S)**

**Illinois Supreme Court Rule 206. Method of Taking Depositions on Oral Examination**

(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating **in the notice EMPHASIS ADDED** the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions. (1) Reserved. (2) **Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition. EMPHASIS ADDED** (3) Reserved. (4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties. (5) Time spent at a remote electronic means deposition in addressing necessary technology issues shall not count against the time limit for

the deposition set by Rule 206(d), by stipulation, or by court order. (6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

M.R.30370 CORRECTED ORDER APRIL 29, 2020

(Please see Plaintiff's Exhibit #5 attached)

M.R.30370 AMENDED ORDER JUNE 4, 2020

(Please see Plaintiff's Exhibit #6 attached)

ILCS /            ro Ch.        , par.

Sec.            . Po er o co rts to a e r les. a The S pre e Co rt o this State has po er to a e r les o pleading, practice and proced re or the circ it, Appellate and S pre e Co rts s pple entar to, t not inconsistent ith the provisions o this Act, and to a end the sa e, or the p rpose o a ing this Act e ective or the convenient ad inistration o j stice, and other ise si pli ing j dicial proced re, and po er to a e r les governing pleading, practice and proced re in s all clai s actions, incl ding service o process in connection there ith. nless other ise indicated the te t, re erences in this Act to r les are to r les o the S pre e Co rt.

S ject to the r les o the S pre e Co rt, the circ it and

*Appellate Courts and a series of rules regulating their documents, calendars, and business.*

*Source P.A. .*

(735 ILCS 5/1-105) (from Ch. 110, par. 1-105)

Sec. 1-105. Enforcement of Act and rules. The Supreme Court may provide by rule for the orderly and expeditious administration and enforcement of this Act and of the rules, including the striking of pleadings, the dismissal of claims, the entry of defaults, the assessment of costs, the assessment against an offending party of the reasonable expenses, including attorney's fees, which any violation causes another party to incur, **or other action that may be appropriate. EMPHASIS ADDED**

(Source: P.A. 82-280.)

Rule 211. Effect of Errors and Irregularities in Depositions; Objections (a) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice. (b) As to Disqualification of Officer or Person. Objection to taking a deposition because of disqualification of the officer or person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification

becomes known or could have been discovered with reasonable diligence. (c) As to Competency of Deponent; Admissibility of Testimony; Questions and Answers; Misconduct; Irregularities. (1) Grounds of objection to the competency of the deponent or admissibility of testimony which might have been corrected if presented during the taking of the deposition are waived by failure to make them at that time; otherwise objections to the competency of the deponent or admissibility of testimony may be made when the testimony is offered in evidence. (2) Objections to the form of a question or answer, errors and irregularities occurring at the oral examination in the manner or taking of the deposition, in the oath or affirmation, or in the conduct of any person, and errors and irregularities of any kind which might be corrected if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition. (3) Objections to the form of written questions are waived unless served in writing upon the party propounding them within the time allowed for serving succeeding questions and, in the case of the last questions authorized, within 7 days after service thereof. (4) A motion to suppress is unnecessary to preserve an objection seasonably made. Any party may, but need not, on notice and motion obtain a ruling by the court on the objections in advance of the trial. (d) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the

testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after the defect is, or with due diligence might have been, ascertained. Committee Comments This rule is derived from former Rule 19-9. The language is unchanged except that the period for filing objections to the form of written questions has been extended to seven days in subparagraph (c)(3) in keeping with the committee's policy of measuring time periods in multiples of seven days.

### **VIOLATIONS**

A) The exhibits that were decided upon to be used by former counsel Julia C. Williams, and specifically exhibit 12, were not provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition. In fact, **exhibit 12 was never provided to the officer administering the oath. EMPHASIS ADDED**

A1) On or about April 30, 2020 Defendants' Counsel sent an email to Plaintiff's former Counsel Julia C. Williams indicating an awareness of the current Supreme Court rules regarding depositions when he wrote "The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2<sup>nd</sup> half of May.." (Please see Plaintiff's Exhibit #7 attached.)

A2) On or about May 29<sup>th</sup> 2020 former attorney Julia C. Williams sent an email to Defendants' Counsel indicating an awareness of the current Supreme Court rules regarding depositions when she wrote " ...and given the Supreme Court rules, it makes sense to take advantage of the remote deposition option." (Please see Plaintiff's Exhibit #8 attached.)

A2.1) On or about June 19, 2020 Defendants' attorney emailed Plaintiff's former attorney Julia C. Williams stating "Julia: I just received your notice of attorney lien. Will you still be taking the dep next week?

My experience with receiving liens at this stage of litigation (in a high percentage of cases) is that a withdrawal shortly follows. Hopefully not the case here, but just making sure we are still on for the Mast's dep. (Please see Plaintiff's Exhibit 15 attached.)

A3) On or about June 23, 2020 Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 23 exhibits that she **may emphasis added** use in the discovery Deposition of Defendant Hans Mast on June 25, 2020. Additionally she indicated that there **could be additions and there may be subtractions. emphasis added**

Additionally she wrote "...and I will do my best to send them ahead of time." (Please see Plaintiff's Exhibit #9 attached.)

A3.1) On or about June 24, 2020 at 10:49 AM (less than 24 hours before the start of the discovery deposition of Defendant Hans Mast) Plaintiff's former attorney Julia C. Williams emailed Defendants' attorney 1 more exhibit that she **may emphasis added** use. (Please see Plaintiff's Exhibit 9 attached.)

A3.2) On June 25, 2020 the discovery deposition of Hans Mast was called at 10:00 AM "pursuant to subpoena and pursuant to the Code of Civil Procedure of the State of



Illinois and the **RULES OF THE SUPREME COURT THEREOF, PERTAINING TO THE TAKING OF DEPOSITIONS, EMPHASIS ADDED** . (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. and Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 1 lines 15 to 17)

A3.3) On June 25, 2020 at 12:31 PM (approximately 15-30 minutes after the conclusion of the discovery deposition of Defendant Hans Mast, Defendant's attorney sends an email to Plaintiff's former attorney Julia C. Williams discussing what is "...fresh in his mind..." but any conversation regarding errors and irregularities in the just concluded deposition is notably absent. (Please see Plaintiff Exhibit 16 attached.)

A3.4) Shortly after the Deposition ended Barbara G. Smith emailed Julia C. Williams asking for Exhibit 12 and Julia C. Williams responded by sending a blank email. Additionally, Barbara G. Smith called and left a message for Julia C. Williams on July 6, 2020 again requesting Exhibit 12. On July 7, 2020 Barbara G. Smith submitted the June 25, 2020 discovery deposition of Hans Mast to U.S. Legal Support without Exhibit 12. (Please see Plaintiff's Group Exhibit 2 attached).

A3.5) The Deposition of Defendant Hans Mast was received by Plaintiff's former attorney and Defendants' attorney from U.S. Legal Support **without the Hans Mist E hibit 12 EMPHASIS ADDED** on July 10, 2020.

A4) On or about July 13, 2020 Noelle Kappes, Scheduling and Client Solution Manager| U.S. Legal Support sends an email to Plaintiff's former attorney Julia C. Williams stating that "the court reporter indicated you would be sending us exhibit 12 from this deposition (discovery deposition of Defendant Hans Mast taken remotely on June 25,

2020) so that we can include it with the transcript. I don't believe we have received it can you send it tomorrow?" (Please see Plaintiff's Exhibit #10 attached)

A5) On or about July 14, 2020 Plaintiff's former attorney Julia C. Williams emails to Noelle Kappes "Dear Noelle, I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here." (Please see Plaintiff's Exhibit #10 attached.)

A6) On or about July 14, 2020 wtolliver2uslegalsupport.com emailed to Plaintiff's former attorney and Defendants' attorney that "Exhibit 12 is now available to download" (Please see Plaintiff's Exhibit #11 attached)

A6.1) Exhibit 12 was never presented to the officer administering the oath Barbara G. Smith, CSR, RPR Notary Public but was sent after the deposition of Defendant Hans Mast was taken on June 25, 2020 but sent on July 14, 2020 to Noelle Kappes, Scheduling and Client Solution Manager| U.S. Legal Support who forwarded it to wtolliver2, another employee of U.S. Legal Support who created the misspelled, non-conforming HANS MIST [**EMPHASIS ADDED** label.

A7) On or about July 14, 2020 Plaintiff's former attorney Julia C. Williams wrote to Plaintiff "Attached is exhibit 12 that was missing in the original transcript copy because the copy that the court reporter received was **blank**. [emphasis added] (Please see Plaintiff's Exhibit #12 attached)

A8) On or about August 5, 2022 Plaintiff's former attorney inexplicitly emails to Mary Winch [marywinch@clintonlaw.net](mailto:marywinch@clintonlaw.net), [ed@clintonlaw.net](mailto:ed@clintonlaw.net) the same email she sent to the same recipients on July 14, 2020. (Please see A5 above and Plaintiff's Exhibit #13 attached)

B) The deposition participants were not able to view the exhibits in real time during the deposition.

B1) The following clearly indicated a problem with viewing the exhibits submitted and the Defendant's internet equipment and internet connection and audio during the attempted remote discovery deposition of Defendant Hans Mast:

B1.1) Q. So I'm uploading Exhibit 2, it's titled Dulberg Mast Dep Exhibit 2, and this should be the original complaint filed in the case Dulberg versus Gagnon, et al., 12 LA 178, filed in McHenry County. Do you see that document?

A. Yeah. What I'm going off are an email I got with all the exhibits attached, so I'm not – that's what I'm looking at.; (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 17 lines 3 to 10 also found on 209 of 464 previously filed.)

B1.2) Q. Okay.

A. Oh, uh, I think—It just kicked me off.

Mr. Flynn: I got disconnected, too. It's the Wi-Fi.

By Ms. Williams:

Q. Okay, we'll just wait a minute here.

A. I can hear you. I just can't see you. Q. We'll wait a minute until you can get your video back on.

Mr. Flynn: Julia, we think the Wi-Fi may have dropped **here in the office. emphasis added**

Ms. Williams: Okay. Well, let's just give a minute and see.; (Please see Defendants'

The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum  
In Support Of Their Motion For Summary Judgment Exhibit G page 22 lines 1  
to 10 also found on 211 of 464 previously filed.)

B1.3) Q. Okay. I just uploaded Dulberg Mast Exhibit 4 and it says letter—it's "Letter Re  
Settlement," and that should be —still be Exhibit 4 that was emailed around to Counsel  
so that you would have it. And it is labeled POP192 and POP193. Do you recognize  
those documents?

A. Wait. I think the Internet, maybe because we were having problems, is the Internet  
went down, so now my exhibits aren't pulling up. Can you try again? Do you have that,  
George?

Mr. Flynn: Yeah, here's the **hard copy. emphasis added**

The Witness: I'll look at the **hard copy emphasis added** , so what are you asking?  
(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans  
Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment  
Exhibit G page 26 lines 5 to 17 also found on 212 of 464 previously filed.)

B1.4) Q. Okay. Just uploaded Exhibit 5, and this is email dated October 30, 2013, and  
it's marked at the bottom 000195.

A. Okay.

Q. Okay, and here in this email it looks like you started this email chain to Paul on  
October 25, 2013. Do you see that?

A. It looks like there's a couple emails here. There's several pages. You just mean the  
first page?

Q. I think—It should only be, I believe it's only one page and it looks like—

A. Oh, these aren't part of it ? Just one page?

Q. The document that I have is just one page. Are we looking at the same thing?

A. Okay.

Q. It's POP00195 on the bottom.

A. Yeah, he had a couple other pages on it, but okay.

Q. Okay. I just want to make sure that I didn't --okay. And on the bottom there of the first sheet, if you have several, **I only published one sheet for the purposes of this**

**deposition emphasis added** , it states, "Friday, October 25, 2013," do you see that?

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 28 lines 16 to 24 and page 29 lines 1-14 also found on 212 of 464 previously filed.)

B1.5) Q. Okay. So I'm going to upload another file here.

A. Yeah, our internet is down. That's why I can't bring these up.

Q. Okay.

Mr. Flynn: Julia, just so you know, I've got hard copies of the majority of the exhibits you sent with the exception of the larger files, like the insurance policy and the dep transcripts.

MS. Williams: Okay. Okay, great.

Mr. Flynn: I've got some of the deposition transcripts, but I didn't want to waste a lot of paper and ink at home.

MS. Williams: Okay. I think we'll be—For the most part, I think we'll be fine and we'll deal with it if and when we get to that point.

Q. Okay. So the document that I'm looking at now is another email on the –it's now titled Exhibit 6. I don't think it was entitled Exhibit 6 in what I sent to George, but it's an email that the first date on the email is November 4, 2013, and the last date is November 5, 2013 email chain and it's –at the bottom it's stamped Dulberg001531.

A. What exhibit is it?

Q. I think it might have been **5-A (emphasis added)** to George. It's now exhibit 6 for the purpose of this deposition. (Please note that there never was an exhibit marked 5-A)

A. Yeah, that wasn't part of the download then. Do you have—

Mr. Flynn: Yeah, I don't think that was included. (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 31 lines 10 to 24 and page 32 lines 1 to 17 also found on 213 of 464 previously filed.)

B1.6) Q. Okay. Okay, I'm going to stop screen sharing. Okay. I'm going to upload another file. This is Deposition Exhibit 7. George, you probably had it as Exhibit 6, but for the purpose of this deposition right now it's going to be 7 and it's an email chain dated—

A. I have these on the computer. You don't need to, unless you want to, but I'm just saying I have these on the computer.

Q. Okay, but Barb needs them, so that's why I keep uploading them, otherwise she doesn't have them. Okay. So Exhibit 7, and it's POP00181 and POP00182, and it's two pages of an email chain, it starts November 15<sup>th</sup> and

ends November 19, is that accurate?

A. Yes.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 35 lines 5 to 20 and also found on 214 of 464 previously filed.)

B2) From this point on the transcript indicated that the deponent could not view any exhibits uploaded so that Plaintiff's former attorney Julia C. Williams was asking questions based upon her attempted uploads but the deponent Defendant Hans Mast was looking at physical documents to respond based upon the following:

B2.1) Q. Okay. So I'm going to upload another document and then we can keep going here. And then this is Exhibit 8 and for –it is a letter from Ronald Barch to you, Hans, and it's POP000667. Do you **have emphasis added** that ?

A. What date is it?

Q. I'm sorry, dated November 18, 2013,

A. Yeah, **I have emphasis added** that.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 36 lines 6 to 13 and also found on 214 of 464 previously filed.)

B2.2) Q. Yep, it's POP000181.

A. What exhibit?

Q. It's Exhibit 7.

A. 7, that's the letter.

Q. If may be 6 for you. It may be 6 for you.

A. Let's take a look. What page is the email?

Q. The date at the top of the email chain is Tuesday, November 19, 2013.

A. Yeah, I **have emphasis added** that.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 38 lines 1 to 9 and also found on 215 of 464 previously filed.)

B2.3) Q. I'm going to add another exhibit here. Okay, for the purpose of this deposition it's Deposition Exhibit 9. This is a memorandum. At the top it will say, " memorandum," and the date is November 20, 2013, and at the bottom it is identified as POP and then 3 – there's 000003, I believe. Do you **have emphasis added that ?**

A. What exhibit is it?

Q. I think you're probably going to have it as Exhibit 8, but for the purpose of this deposition it's actually going to be Exhibit 9.

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G Pages page 40 lines 12 to 22 and also found on 214 of 464 previously filed.)

B2.4) Q. Okay, I'm uploading Dulberg Mast Dep Exhibit 12. **This is titled "Legal Research." And this is hard because there's – it's 27 pages. Some of them have Bates numbers, but some of them are black on the bottom, so I think the bates Numbers didn't –didn't take, but it's roughly – looks like roughly 204, maybe 205, Dulberg 204, 205 through roughly Dulberg00304 –Actually, I'm sorry, these aren't going to be continuous. But do you have the packet of legal research in front of you? It appears to be copies out of a – copies of case law out of the Northeastern**



**Digest.**

**A. I just have the one case here.**

**Q. Just one case? Which – What is the case title?**

**A. The first one, it's LAJATO. emphasis added**

(Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G page 49 lines 20 to 24, page 50 lines 1 to 11 and also found on 217-218 of 464 previously filed.)

C) The case of Tilschner v. Spangler No.2-10-0111, 949 N.E.2d 688, 350 Ill.Dec.896, 409 Ill.App.3d 98 (2011) which Plaintiff Paul Dulberg specifically instructed his former attorney Julia C. Williams to include as an exhibit to be the basis of questions to the deponent Defendant Hans Mast because: Mast had personally given a copy of the certified opinion to Dulberg on November 20, 2013; had personally appeared and argued the case along with Thomas J. Popovich, and Mark J. Vogg of Defendant the Law Offices of Thomas J. Popovich, P.C.; and had insisted that the decision in the case was the reason Plaintiff Paul Dulberg would not prevail in the underlying case against the Defendants Carolyn and William (Bill) McGuire. (This is based upon information and belief pending this Honorable Court's ruling upon Plaintiff's previously filed Motion To Compel concerning his former attorney Julia C. Williams' claims of Attorney-Client Privilege and Work Product.) (Please see Plaintiff's Exhibit 14 Tilschner v. Spangler No.2-10-0111 attached)

C1) Tilschner v. Spangler No.2-10-0111 was not included in exhibit 12 as constituted, when sent 19 days after the deposition had concluded, in response to the inquiries of

Noelle Kappes Scheduling and Client Solutions Manager| U.S. Legal Support (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G found on pages 264 - 290 of 464 previously filed.)

C2) Tilschner v. Spangler No.2-10-0111 was inexplicitly replaced with an exact duplicate of the Lejato v. AT&T, INC., No. 1-95-0447 669 N.E.2d 645 283 Ill. App. 3d 126 (1996) (Please see Defendants' The Law Offices Of Thomas J. Popovich, P.C. And Hans Mast's Motion/Memorandum In Support Of Their Motion For Summary Judgment Exhibit G Pages 264-285 of 464 previously filed.)

D1) On November 4, 2022 Defendants' attorney was allowed to raise the issue of "waiver" alleging that both Defendant Hans Mast's attorney and Plaintiff Paul Dulberg waived any and all objections by stating " all objections to that manner were waived by both parties." (Please see Report of Proceeding November 4, 2022 page 14 line 14-15 which is contained in the Clerk of Court's electronic file for this matter.

D2) The Illinois General Assembly empowered the Illinois Supreme Court to make and enforce rules for the Circuit, Appellate and Supreme Court. (Please see above - ILCS / ro Ch. , par. and (735 ILCS 5/1-105) (from Ch. 110, par. 1-105).

D3) Illinois Supreme Court Rule 211 does not allow opposing attorneys to waive the rules and orders powers granted to the Illinois Supreme Court by the Illinois General Assembly.

D4) It should be noted that:1) there were multiple emails between the Plaintiff and

Defendants' attorneys as close in time as less than 24 hours before and at most 30 minutes after the deposition and the subject of "waiver" was not discussed. (Please see Exhibits 9, 15 and 16 attached.); 2) On July 30, 2020 Julia C. Williams, in response to Plaintiff's question about the Deposition of Hans Mast did not respond with anything about "waiver" of issues and cavalierly stated "Your future counsel will need to bring that before the Judge at some point" Please see Plaintiff Exhibit 17 attached); 3) Julia C. Williams filed her Motion to Withdraw on behalf of herself and the Clinton Law Firm on August 18, 2020 (Please see the Clerk of McHenry County Circuit Court's electric file for this case.)

**Wherefore,** Plaintiff Paul Dulberg prays that Plaintiff's Motion to Exclude the discovery deposition of Defendant Hans Mast taken remotely on June 25, 2020 is granted, that Plaintiff request to take the deposition of Defendant Hans Mast is granted, but if Defendants' verbal request to file a sur-response is allowed then the Plaintiff be granted a reasonable time to file a sur-reply after considering what's left of Plaintiff's time to respond to Defendant's Motion for Summary Judgment and for any other additional relief this Honorable Court deems fair and equitable.

Respectfully submitted,

/s/ Alphonse A. Talarico

Alphonse A. Talarico

By: Alphonse A. Talarico

Plaintiff's attorney

707 Skokie Boulevard Suite 600

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(312) 808-1410

ARDC No. 6184530

contact@lawofficeofalphonsetalarico.com

[alphonsetalarico@gmail.com](mailto:alphonsetalarico@gmail.com)

**RE: Dulberg v. Mast and Popovich**

Linda Walters <lwalters@karballaw.com>

Thu 4/28/2022 4:00 PM

To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

Cc: George Flynn <gflynn@karballaw.com>

On behalf of George Flynn, please use the below link to access Mast Dep Ex. 12.

<https://www.dropbox.com/s/b2lmm0a6s3oex3d/Mast%20Dep%20Ex.%2012.PDF?dl=0>

Thank you.

Linda Walters  
Asst. to George Flynn

**Linda Walters**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**

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✉ E: lwalters@karballaw.com

**CONFIDENTIALITY NOTE:**

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Dear Noelle,

I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here.

Best Regards,

Julia Williams  
Of Counsel  
The Clinton Law Firm  
111 W. Washington, Ste. 1437  
Chicago, IL 60602  
P:312.357.1515  
F: 312.201.0737  
[juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

*put this x in folder on desktop  
& renamed bad file 12-A - this  
is the new 12*

Click to Download

Dulberg Mast Dep Exh 12 Legal Research .pdf  
35.1 MB

*still couldn't read 1-22 → there was a problem reading  
this document*

On Jul 13, 2020, at 8:37 PM, Noelle Kappes <[nkappes@uslegalsupport.com](mailto:nkappes@uslegalsupport.com)> wrote:

Hi there,

*called Noelle - 10:30-7-14 - she will have  
William look at it or email Williams*

The court reporter indicated you would be sending us exhibit 12 from this deposition so we can include it with the transcript. I don't believe we have received it. Can you send it on tomorrow?

Thank you,  
Noelle

Please find attached confirmation of scheduling regarding the matter referenced below.

Witness: Hans Mast

Case Name: Paul Dulberg v. Law Offices of Thomas Popovich, et al.

Date: 06/25/2020

Time: 10:00 AM, (GMT-06:00) Central Time (US & Canada)

Location:



Reporter and all Parties will appear via Video Conference.

Thank you for choosing U.S. Legal Support.  
Court Reporting | Record Retrieval | Trial Services

Please note: To ensure your safety and the safety of others, when visiting a U.S. Legal Support office, please practice responsible social distancing measures. We ask that you provide and wear your own mask in common areas (halls, restrooms, break areas, cube areas, conference rooms, etc.). Thank you for your understanding and cooperation.

<CFM923267.PDF>

Hi Ms. Williams - This is Barb Smith, the court reporter from US Legal that was present at the dep of Hans Mast on 6-25-20. I am currently working on the transcript and while preparing the exhibits I noticed that Exhibit No. 12, which is the 27 pages of legal research, did not download completely. The Exhibit 12 that I have has blank pages 1-22 and only pages 23-27 have print on them. I just wanted to let you know and check if you wanted to resend or if that's how No. 12 is supposed to be.

Thank you.

Barb

7-2-20

Williams responded 7-2-20  
but the ~~left~~ space was  
blank.

called 7-6-20 left message

7-7 submitted job and emailed  
Noelle about it



## Job 923267

From: Smith Family (barbnwally@att.net)

To: nkappes@uslegalsupport.com

Date: Tuesday, July 7, 2020, 09:32 PM CDT

Hi Noelle -- Hope you're doing well. I just want to let you know I submitted this job, 923267, last night. Two things I wanted to let you know about. First, this job and 925187 were both submitted last night. These are the first two I used Box for the exhibits. I hope I did them correctly. If there's any problems, please let me know.

For 923267 I have another issue. One of the exhibits, #12, was downloaded during the Zoom session. It's 27 pages and when I first looked at it I noticed that pages 1-22 were blank. I emailed Julia Williams, our client, on 7-2 about this. She responded and the message section of her email was blank. I waited for another email but received none. On 7-6 I called and left her a message and have not received a response. I did note all of this information in the email that I sent the job with.

The main reason I'm telling you all of this is that I am going to be out of town Thursday and Friday. My daughter is getting married in Arkansas so I will not be bringing my computer with me and will be quite busy. Hopefully I hear from her on Wednesday.

Thanks,

Barb

**IN THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT  
MCHENRY COUNTY, ILLINOIS**

PAUL DULBERG,	)	
PLAINTIFF,	)	
	)	
v.	)	No. 17 LA 377
	)	
THE LAW OFFICES OF THOMAS POPOVICH,	)	
and HANS MAST,	)	
DEFENDANTS.	)	

**AMENDED NOTICE OF DEPOSITION**

**TO: All Attorneys of Record (See Attached Service List)**

**YOU ARE HEREBY NOTIFIED**, that pursuant to the provisions of Section 2-1003 of the Illinois Code of Civil Procedure and Supreme Court Rule 206, the following deposition will be taken for the purpose of discovery before a Notary Public via remote electronic deposition at the time and place specified, upon oral interrogatories to be propounded to said witness.

<u>Deponent</u>	<u>Location</u>	<u>Date</u>	<u>Time</u>
Hans Mast	Compton Law Group 85 Market St. Elgin, IL 60123 (remote electronic deposition)	June 25, 2020	10:00a.m.

YOU ARE HEREBY FURTHER NOTIFIED that you are by this Notice required to have present at the date, time, and place stated, the said Deponent for oral examination for the purpose of discovery. YOU ARE FURTHER NOTIFIED that PAUL DULBERG, a party to this case, intends to be present at the above noticed deposition.

Edward X. Clinton, Jr., ARDC No. 6206773

— Julia C. Williams, ARDC No. 6296386

The Clinton Law Firm

111 W. Washington, Ste. 1437

Chicago, IL 60602

312.357.1515

[ed@clintonlaw.net](mailto:ed@clintonlaw.net)

[juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)

**AFFIDAVIT OF SERVICE**

I, the undersigned, a non-attorney, certify that I served this Notice by emailing a copy to each party to whom it is directed by 5:00 p.m. on June 4, 2020.

[X] Under penalties as provided by law pursuant to  
735 ILCS 5/1-109, I certify that the statements set  
forth herein are true and correct.

/s/ Julia C. Williams  
Julia C. Williams

SERVICE LIST:

George Flynn

Karbal | Cohen | Economou | Silk | Dunne | LLC

150 S. Wacker Drive

Suite 1700

Chicago, IL 60606

P: (312) 431-3622

F: (312) 431-3670

E: [gflynn@karballaw.com](mailto:gflynn@karballaw.com)

*up left  
EXPT*

*SPS  
David Gagnon  
Caroline & Bill McGuire  
1000 Avenue  
Ronald Burch*

*EXAM  
Williams 5  
Flynn 48-76*

*X*  
1- 16  
2- 17  
3- 18  
4- 28 26  
5- 30 28  
6- 34 32  
7- 37 35  
8- 38 36  
9- 40 40  
10- 48 46  
11- 50 48  
12- 54 44  
13- 55 53  
14- 57 55  
15- 60 64

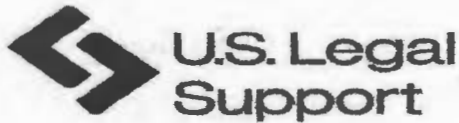
[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

*Choi - B- Commonwealth Edison  
is the only case I have in  
#12 download*

/s/ Julia C. Williams

Julia C. Williams

*witness said he only has  
Lajato case in his #12*



U.S. Legal Support - Chicago  
200 West Jackson  
Suite 600  
Chicago, IL 60606  
Telephone: 312-236-8352  
Fax: 312-236-3344

## JOB WORKSHEET

#12 1-27-2020  
23-27 only

Resource	Barbara G. Smith		
Job No.	923267	Job Type	Deposition
Job Date	06/25/2020	Job Time	10:00 AM (GMT-06:00) . Central Time (US & Canada)
Due Date	07/10/2020	Notation	R/VC
Witness	Hans Mast		
Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	17LA377		
Location	*U.S. Legal Support, Inc. - Remote Video Conference Reporter and all Parties will appear via Video Conference.  Phone: Room No.: Detail: To join the Video Conference, a website link will be provided by U.S. Legal Support the business day prior to the setting.		
Remarks	Court Reporter & RemoteDepo *everyone appearing remotely except attorney George Flynn who will be with the deponent REPORTER MUST READ THE ATTACHED READ ON		

SB PPT  
warned

Client	Clinton Law Firm 111 West Washington Street Suite 1437 Chicago, IL 60602 Phone: 312-357-1515 Fax: 312-201-0737		
Contact	Julia Williams		
Ordered By	Julia Williams via email		
Requested Service	Service Item	Units	
	RemoteDepo w/InstantExhibit -	1.00	
	Videoconferencing		

rep pte 5/24/20

juliacwilliams  
@clintonlaw.net

Thank you for accepting this assignment. Please note that by accepting this assignment, you acknowledge U.S. Legal Support's requirement to have an up-to-date W-9, BAA, and CIA form submitted prior to our releasing payment.

Please provide the transcript to our production team by due date reflected above.  
Exhibits to be delivered to production within 3 days after deposition.

13 interrog  
14 interrog  
15 ~~mtg~~

16

17

18

19

20

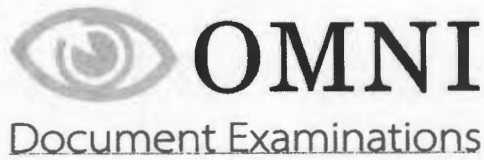
#1 runner 6 Nov 13  
2 complaint 7 email  
3 memo 8 email  
4 ~~letter~~ 9 memo  
5 email 10 memo 12-18  
11 letter + mtg  
12 case law

witness  
& atty Ryan  
in meeting  
20.

start 10:08  
end 12:20  
#18

App. Paul  
DeLorenzo  
Bulberg

Mr. Flynn - left  
copy res + memo



**Robin D. Williams, MFS, MS, D-  
BFDE  
Board Certified**

**Bonnie L. Schwid, B.S., D-  
BFDE  
Board Certified**

July 11, 2022

Attorney Alphonse A. Talarico  
Law Office of Alphonse Talarico  
707 Skokie Blvd.  
Suite 600  
Northbrook, Illinois 60062

### **REPORT OF FINDINGS**

**RE: Dulberg v Popovich et al LA 377**

Dear Attorney Talarico,  
Pursuant to your request, I examined the following documents:

**Document containing a disputed Exhibit Label**  
(machine copy)

- Q-1 The first page of a 27-page document containing machine copies of pages from a book or books. The first line on the yellow label reads "Exhibit 12".  
The label is in the bottom center of a machine copy of 2 pages. The page number in the upper left corner is 502. The center heading reads: "218 Illinois Decisions".  
Dated 6-25-2020.  
Some of the pages in the 27-page document are duplications of previous pages.  
The page sequencing in the 27-page document is as follows: 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 854, 855, 856, 857, 858.

**Document(s) submitted as containing genuine Exhibit Labels**  
(machine copies):

- K-1 The yellow label at the bottom right of the document reads "Exhibit 1".  
K-2 The yellow label at the top center of the document reads "Exhibit 2".  
K-3 The yellow label at the bottom right of the document reads "Exhibit 3".  
K-4 The yellow label at the bottom right of the document reads "Exhibit 4".  
K-5 The yellow label at the bottom right of the document reads "Exhibit 5".  
K-6 The yellow label at the bottom right of the document reads "Exhibit 6".  
K-7 The yellow label at the bottom right of the document reads "Exhibit 7".  
K-8 The yellow label at the bottom right of the document reads "Exhibit 8".  
K-9 The yellow label at the bottom right of the document reads "Exhibit 9".



**Mailing Address:**  
1253 Scheuring Road  
Clark Street  
Suite A  
Suite 1500

1001 W. Glen Oaks Ln.  
Suite 21 9

161 N.

July 11, 2022

K-10 The yellow label at the bottom right of the document reads "Exhibit 10".

K-11 The yellow label at the bottom right of the document reads "Exhibit 11".

K-13 The yellow label at the bottom right of the document reads "Exhibit 13".

K-14 The yellow label at the top center of the document reads "Exhibit 14".

K-15 The yellow label at the bottom right of the document reads "Exhibit 15".

### **Assignment**

The purpose of the examination was to determine whether the yellow label that is in question on Item Q-1, also identified as Exhibit Label #12 and the labels submitted as genuine on Items K-1 through K-11 and K-13 through K-15 all originated from the same group or batch of labels.

### **Procedure**

The examination consisted of visual and microscopic study of the font styles, the discriminating variations of letter formations, letter designs, beginnings and endings of letters, t-crossings, spelling of words and exterior and interior shapes of the labels.

### **Opinion**

It is the opinion of this examiner that the label in question identified as Q-1, Questioned Label #12, did not come from the same group or batch of labels identified as Items K-1 through K-11 and K-13 through K-15.

### **Discussion**

Item Q-1, Exhibit Label #12 contained a different font in all of the words on the label (except in the word "Date") and in numerals 1 and 2 as illustrated in the attached charts.

It is important to note that the name of Hans Mast was misspelled on Item Q-1, Exhibit Label #12, as "Hans Mist".

It is noteworthy that in an enlargement of the label identified as Q-1, Exhibit Label #12, is the appearance of a squared outer edge in the upper left corner of the label that can be seen. This differs from the rounded outer edges of the known labels that were used for comparison.

RE: Dulberg v Popovich et al LA 377

Page 3

July 11, 2022

This examination was conducted from machine copies of the document in question and the exemplars used for comparison. I assume that they are accurate reproductions of the originals. If the original documents become available, I am requesting the opportunity to examine the original documents containing the original labels and revisit my opinion. However, I do not believe my opinion will change.

Please allow four weeks in the event that testimony will be required.

Respectfully submitted,  
Omni Document Examinations

A handwritten signature in black ink that reads "Robin D. Williams". The signature is written in a cursive, flowing style with a large initial 'R'.

Robin D. Williams, MFS, MS, D-BFDE  
*Diplomate-Board of Forensic Document Examiners*



## Dulberg v. Popovich

George Flynn <gflynn@karballaw.com>

Mon 7/11/2022 10:25 AM

To: Alphonse Talarico <contact@lawofficeofalphonsetalarico.com>

Cc: Linda Walters <lwalters@karballaw.com>

📎 1 attachments (26 MB)

EX 0012 Hans Mast 062520.pdf;

**Mr. Talarico:**

**Below is a copy the transmittal email with exhibit 12 received by my office on July 14, 2020. A previous email from July 10, 2020 from US legal contained the other deposition exhibits. The link contained in the July 14 email produced the attached PDF of exhibit 12.**

Regards,

**From:** "wtolliver@uslegalsupport.com" <wtolliver@uslegalsupport.com>

**Date:** July 14, 2020 at 11:13:35 AM CDT

**To:** George Flynn <gflynn@karballaw.com>

**Subject:** Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020

*(email sent to [juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net), [gflynn@karballaw.com](mailto:gflynn@karballaw.com)) Exhibit 12 is now available to download.*

U.S. Legal Support has switched to paperless production. Your litigation support package contains digital files of your transcript and exhibits. These files are also readily available 24/7 via our secure Client Online Portal. The certified original will be printed to facilitate lodging with the Court. Should you require a hard certified copy of the transcript or a CD of your files, please contact your local U.S. Legal Support office.

Thank you for choosing U.S. Legal Support.

We have uploaded the following file(s). To open or download, please click on the link(s) below.

### File Information

Case Name	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
Case No.	17LA377		
Job No.	923267	Job Date	6/25/2020
Witness	H. Mast Exhibits		



If you are unable to see the links or are not redirected to the file(s), please copy and paste the URL below in your browser:

<https://share.uslegalsupport.com/docs/download?tk=86791893-4ae0-47ae-884c-52dfe3f186c0>


**Available File(s)**


File Type	File Name	Description	Size(KB)
Exhibit	<u>EX 0012 Hans Mast 062520.pdf</u>		26741

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**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**  
**Please note our new address below effective May 27, 2022**  
**200 S. Wacker Drive**  
**Suite 2550**  
**Chicago, IL 60606**

 P: (312) 431-3622

 F: (312) 431-3670

 E: gflynn@karballaw.com

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IN THE  
SUPREME COURT OF ILLINOIS

In re:

Illinois Courts Response to  
COVID-19 Emergency/Impact  
On Discovery

M.R.30370

Corrected  
Order

In the exercise of the general administrative and supervisory authority over the courts of Illinois conferred on this Court pursuant to Article VI, Section 16 of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VI, sec. 16); and in view of the actions that have been taken by the Governor of the State of Illinois in response to the outbreak of the novel coronavirus (COVID-19); and consistent with the order issued by this Court on March 17, 2020,

IT IS HEREBY ORDERED:

Effective immediately and until further order of the Court, paragraph (h) of Illinois Supreme Court Rule 206 is temporarily amended as follows:

**(h) Remote Electronic Means Depositions.** Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.

(1) Reserved. ~~The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.~~

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

(3) Reserved. ~~Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.~~

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.

(5) Time spent at a remote electronic means deposition in addressing necessary



technology issues shall not count against the time limit for the deposition set by Rule 206(d), by stipulation, or by court order.

(6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.

Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended February 16, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019; temporarily amended Apr. 29, 2020, eff. immediately.

Committee Comments  
(April 29, 2020)

Paragraph (h)

Where a deponent testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying deponent, care must be taken to ensure the integrity of the examination. The testifying deponent may be examined regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a deponent should instruct the deponent that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented deponents may be similarly instructed by counsel for any party.

Order entered by the Court.



IN WITNESS WHEREOF, I have hereunto  
subscribed my name and affixed the seal of  
said Court, this 29th day of April, 2020.

*Carolyn Taft Gosboell* Clerk,  
Supreme Court of the State of Illinois

IN THE  
SUPREME COURT OF ILLINOIS

In re:

Illinois Courts Response to  
COVID-19 Emergency/Impact  
On Discovery

M.R. 30370

Effective immediately, the Court's corrected order of April 29, 2020 regarding Illinois Courts Response to COVID-19 Emergency/Impact On Discovery is amended to add a committee comment concerning the temporary amendment of paragraph (h)(3) of Illinois Supreme Court Rule 206 as follows:

**(h) Remote Electronic Means Depositions.** Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.

(1) Reserved. ~~The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.~~

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition, unless the deposition participants are able to view the exhibits in real time during the deposition.

(3) Reserved. ~~Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.~~

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.

(5) Time spent at a remote electronic means deposition in addressing necessary technology issues shall not count against the time limit for the deposition set by Rule 206(d), by stipulation, or by court order.

(6) No recording of a remote electronic means deposition shall be made other than the recording disclosed in the notice of deposition.



Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended February 16, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019; temporarily amended Apr. 29, 2020, eff. immediately.

Committee Comments  
(April 29, 2020)

Paragraph (h)

Where a deponent testifies from a remote location and no neutral representative or representative of an adverse party is present in the room with the testifying deponent, care must be taken to ensure the integrity of the examination. The testifying deponent may be examined regarding the identity of all persons in the room during the testimony. Where possible, all persons in the room during the testimony should separately participate in the videoconference. In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a deponent should instruct the deponent that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney. Unrepresented deponents may be similarly instructed by counsel for any party.

Committee Comments  
(June 4, 2020)

Paragraph (h)(3)

Subparagraph (h)(3) has been deleted to avoid discovery disputes over physical presence by a party or a party's attorney at a remote deposition. Deletion of the subparagraph does not mean that personal presence by a party or a party's attorney is absolutely prohibited. During the pandemic not all depositions are required to proceed remotely, nor is a continuance automatically required if counsel cannot agree on a remote method. Absent agreement, the circumstances of a remote deposition are within the discretion of the trial court.

Order entered by the Court.



IN WITNESS WHEREOF, I have hereunto  
subscribed my name and affixed the  
seal of said Court, this 4th day of June,  
2020.

*Carolyn Taft Gusbell* Clerk,  
Supreme Court of the State of Illinois

6-7

Good Morning, George,

I hope you are doing well. I would prefer to do an in-person deposition given that the client will likely want to be present and that may present some issues with a video deposition. That being said, I don't want to hold this up indefinitely.

Let's plan for the end of June. If the "stay at home" orders get extended again, we will reconsider the "in person" v "remote" deposition.

I hope you and your family are well.

I am working remotely. If you need to call—the best remote number is 312.508.3376.

Thanks,

Julia Williams  
Of Counsel  
The Clinton Law Firm  
111 W. Washington, Ste. 1437  
Chicago, IL 60602  
P:312.357.1515  
F: 312.201.0737  
[juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

On Apr 30, 2020, at 11:12 AM, George Flynn  
<[gflynn@karballaw.com](mailto:gflynn@karballaw.com)> wrote:

Julia:

I hope you and your family are staying safe, healthy, and busy during these uncharted times.

The recent temporary amendment to Rule 206 (facilitating depositions during the Covid crisis), prompted me to touch base and inquire whether you may want to consider attempting to depose Hans Mast remotely in the 2<sup>nd</sup> half of May.

Otherwise, perhaps we can get a live deposition on the books for some time in June. If so, I would



suggest the 2<sup>nd</sup> half of June.

Let me know what you think

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**

150 S. Wacker Drive

Suite 1700

Chicago, IL 60606

<phone\_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P:

(312) 431-3622

<fax\_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312)

431-3670

<envelope\_5540fadc-2f13-4c5f-af64-

a2c20113037b.png> E: [gflynn@karballaw.com](mailto:gflynn@karballaw.com)

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Hi Julia. I think June 17 will work. Just let me know the details. For the time being, I will plan on being at Hans' office for the deposition.

I am still not sure about June 5. I may attend live, but I should be able to make a decision by Tuesday.

How about touching base on Monday regarding the deposition logistics?

If you need to call, my cell is 773-341-8114.

So far so good here. I hope you and your family are doing well. Thanks

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**

150 S. Wacker Drive

Suite 1700

Chicago, IL 60606

<phone\_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622

<fax\_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670

<envelope\_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: [gflynn@karballaw.com](mailto:gflynn@karballaw.com)

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**From:** Julia Williams <[juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)>

**Sent:** Friday, May 29, 2020 4:37 PM

**To:** George Flynn <[gflynn@karballaw.com](mailto:gflynn@karballaw.com)>

**Subject:** Re: Dulberg v. Popovich

Hi George,

How is the June 16,17, or 18? If not, we should also be open the week after on Wednesday or Thursday—June 24, 25.

I anticipate this will be a video deposition, despite things opening back up, I think it is the safest route for everyone and given the Supreme Court rules, it makes sense to take advantage of the remote deposition option. Details to come on that. We can work that out and a time once we get the date nailed down.

I believe we have a June 5 status date. I believe we are encouraged to either use CourtCall or get an agreed order. I am happy to draft an agreed order setting out a date for close of oral fact discovery (f(1), f(2)) and setting the matter for further status, so we can submit it to the Judge prior to June 5 to avoid the date. Alternatively, I am also happy to appear via CourtCall if you intend to appear.

I hope you and your family are well.



Best Regards,

Julia Williams  
Of Counsel  
The Clinton Law Firm  
111 W. Washington, Ste. 1437  
Chicago, IL 60602  
P:312.357.1515  
F: 312.201.0737  
[juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)

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On May 4, 2020, at 11:43 AM, George Flynn  
<[gflynn@karballaw.com](mailto:gflynn@karballaw.com)> wrote:

Thanks Julia. So far so good here.

Sounds like a plan. If you have a date in mind for late June, I have a feeling it will work for me. I can pass it along to Hans, so he can hold the date. Please also advise where you want to conduct the deposition.

Take care

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**  
150 S. Wacker Drive  
Suite 1700  
Chicago, IL 60606

<phone\_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622  
<fax\_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670  
<envelope\_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: [gflynn@karballaw.com](mailto:gflynn@karballaw.com)

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**From:** Julia Williams <[juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)>  
**Sent:** Monday, May 4, 2020 11:37 AM  
**To:** George Flynn <[gflynn@karballaw.com](mailto:gflynn@karballaw.com)>  
**Subject:** Re: Dulberg v. Popovich

- . . . -



**From:** Julia Williams [juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)  
**Subject:** Re: Dulberg v Popovich Firm et al; Mast Deposition Exhibits  
**Date:** June 24, 2020 at 10:49 AM  
**To:** George Flynn [gflynn@karballaw.com](mailto:gflynn@karballaw.com)



Dear George,

Here is one more exhibit that I may use. We are still waiting on the instructions from US Legal which I expect by COB today.

Best Regards,

Julia Williams  
Of Counsel  
The Clinton Law Firm  
111 W. Washington, Ste. 1437  
Chicago, IL 60602  
P: 312.357.1515  
F: 312.201.0737  
[juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)

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On Jun 24, 2020, at 9:31 AM, George Flynn <[gflynn@karballaw.com](mailto:gflynn@karballaw.com)> wrote:

Thanks Julia. I will see you virtually, tomorrow.

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**

150 S. Wacker Drive

Suite 1700

Chicago, IL 60606

<phone\_3aef1e25-ed01-4e86-9c05-55877d93199b.jpg> P: (312) 431-3622

<fax\_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670

<envelope\_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: [gflynn@karballaw.com](mailto:gflynn@karballaw.com)

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**From:** Julia Williams <[juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)>

**Sent:** Tuesday, June 23, 2020 4:26 PM

**To:** George Flynn <[gflynn@karballaw.com](mailto:gflynn@karballaw.com)>

**Cc:** Mary Winch <[marywinch@clintonlaw.net](mailto:marywinch@clintonlaw.net)>; Ed Clinton <[ed@clintonlaw.net](mailto:ed@clintonlaw.net)>

**Subject:** Dulberg v Popovich Firm et al; Mast Deposition Exhibits

Dear George,

Attachments available until Jul 23, 2020

I am attaching the deposition exhibits that I may use on Thursday. I don't believe there will be any additions between now and then, but if there are they will be minor and I will do my best to send them ahead of time. Obviously, I may not use all of these.

I have not used US Legal or done any remote depositions so you will have to forgive any errors. My understanding is that in the video conferencing system I will be able to upload the document in Pdf or other format (I am only using PDFs), then you and the court reporter will be able to download it. The court reporter will label the exhibits and



include them in the transcript after the deposition is complete. You are not required to print any of the documents—unless of course you would like to do that.

I did my best to label the exhibits in the number order that I believe I will use them. That being said, things change in depositions and they may have to be renumbered. In an effort to not make it super confusing, I used descriptive names as well.

If you have questions/concerns, please let me know. Otherwise, I will see you remotely on Thursday and we'll hope that everything goes smoothly.

Best Regards,

Julia Williams  
Of Counsel  
The Clinton Law Firm  
111 W. Washington, Ste. 1437  
Chicago, IL 60602  
P:312.357.1515  
F: 312.201.0737  
[juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)

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Dulberg Mast Dep Exh 23 Emails re Gagnon Value 2015 Mar 12.pdf  
206 KB



Dulberg Mast  
Dep Ex...v 4.pdf



**From:** Noelle Kappes [nkappes@uslegalsupport.com](mailto:nkappes@uslegalsupport.com)  
**Subject:** RE: U.S. Legal Support - Confirmation of Scheduling - Job No. 923267  
**Date:** July 14, 2020 at 11:27 AM  
**To:** Julia Williams [juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)  
**Cc:** Smith Family [barbnwally@att.net](mailto:barbnwally@att.net), Mary Winch [marywinch@clintonlaw.net](mailto:marywinch@clintonlaw.net), Ed Clinton [ed@clintonlaw.net](mailto:ed@clintonlaw.net)

Received, thank you.

Noelle Kappes  
Scheduling and Client Solutions Manager | U.S. Legal Support  
200 West Jackson Boulevard, Suite 600  
Chicago, IL 60606

-----  
Direct 312.854.1422 | Main 312.957.4546  
[nkappes@uslegalsupport.com](mailto:nkappes@uslegalsupport.com)  
[www.uslegalsupport.com](http://www.uslegalsupport.com)



**From:** Julia Williams <[juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)>  
**Sent:** Tuesday, July 14, 2020 9:41 AM  
**To:** Noelle Kappes <[nkappes@uslegalsupport.com](mailto:nkappes@uslegalsupport.com)>  
**Cc:** Smith Family <[barbnwally@att.net](mailto:barbnwally@att.net)>; Mary Winch <[marywinch@clintonlaw.net](mailto:marywinch@clintonlaw.net)>; Ed Clinton <[ed@clintonlaw.net](mailto:ed@clintonlaw.net)>  
**Subject:** Re: U.S. Legal Support - Confirmation of Scheduling - Job No. 923267  
**Importance:** High

This message has originated from an **External Source**. Please use caution when opening attachments, clicking links, or responding to this email.

Dear Noelle,

Attachment available until Aug 13, 2020

I am sorry. I thought I had responded to Barbara's email with the exhibit. It is attached here.

Best Regards,

Julia Williams  
Of Counsel  
The Clinton Law Firm





THE CLINTON LAW FIRM  
111 W. Washington, Ste. 1437  
Chicago, IL 60602  
P:312.357.1515  
F: 312.201.0737  
[juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)

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Dulberg Mast Dep Exh 12 Legal Research .pdf  
35.1 MB

On Jul 13, 2020, at 8:37 PM, Noelle Kappes  
<[nkappes@uslegalsupport.com](mailto:nkappes@uslegalsupport.com)> wrote:

Hi there,

The court reporter indicated you would be sending us exhibit 12 from this deposition so we can include it with the transcript. I don't believe we have received it. Can you send it on tomorrow?

Thank you,  
Noelle

Please find attached confirmation of scheduling regarding the matter referenced below.

Witness: Hans Mast

Case Name: Paul Dulberg v. Law Offices of Thomas Popovich, et al.

Date: 06/25/2020

Time: 10:00 AM, (GMT-06:00) Central Time (US & Canada)

Location:

Reporter and all Parties will appear via Video Conference.

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CEM022267 PDF

**From:** wtolliver@uslegalsupport.com  
**Subject:** Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020  
**Date:** July 14, 2020 at 11:13 AM  
**To:** juliawilliams@clintonlaw.net



(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

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<b>Case Name</b>	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
<b>Case No.</b>	17LA377		
<b>Job No.</b>	923267	<b>Job Date</b>	6/25/2020
<b>Witness</b>	H. Mast Exhibits		

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Exhibit	EX 0012 Hans Mast 062520.pdf		26741

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**From:** Julia Williams juliawilliams@clintonlaw.net  
**Subject:** Fwd: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020  
**Date:** July 14, 2020 at 11:17 AM  
**To:** Paul Dulberg pdulberg@comcast.net  
**Cc:** marywinch@clintonlaw.net, ed@clintonlaw.net

Dear Paul,

Attached is exhibit 12 that was missing in the original transcript copy because the copy that the court reporter received was blank.

Best Regards,

Julia Williams  
Of Counsel  
The Clinton Law Firm  
111 W. Washington, Ste. 1437  
Chicago, IL 60602  
P: 312.357.1515  
F: 312.201.0737  
juliawilliams@clintonlaw.net

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EX 0012 Hans  
Mast 0...20.pdf

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**From:** "wtolliver@uslegalsupport.com" <wtolliver@uslegalsupport.com>  
**Subject:** Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020  
**Date:** July 14, 2020 at 11:13:26 AM CDT  
**To:** <juliawilliams@clintonlaw.net>

(email sent to [juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net), [gflynn@karballaw.com](mailto:gflynn@karballaw.com)) Exhibit 12 is now available to download.

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<b>Case Name</b>	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
<b>Case No.</b>	17LA377		
<b>Job No.</b>	923267	<b>Job Date</b>	6/25/2020
<b>Witness</b>	H. Mast Exhibits		

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**From:** Julia Williams juliawilliams@clintonlaw.net  
**Subject:** Fwd: Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020  
**Date:** August 5, 2022 at 10:21 AM  
**To:** Mary Winch marywinch@clintonlaw.net, ed@clintonlaw.net

Julia Williams  
Of Counsel  
The Clinton Law Firm  
111 W. Washington, Ste. 1437  
Chicago, IL 60602  
P: 312.357.1515  
F: 312.201.0737  
juliawilliams@clintonlaw.net

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Begin forwarded message:

**From:** "wtolliver@uslegalsupport.com" <wtolliver@uslegalsupport.com>  
**Subject:** Exhibit 12 - Paul Dulberg v. Law Offices of Thomas Popovich, et al. - Deposition of Hans Mast, 6/25/2020  
**Date:** July 14, 2020 at 11:13:26 AM CDT  
**To:** <juliawilliams@clintonlaw.net>

(email sent to juliawilliams@clintonlaw.net, gflynn@karballaw.com) Exhibit 12 is now available to download.

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**File Information**

<b>Case Name</b>	Paul Dulberg v. Law Offices of Thomas Popovich, et al.		
<b>Case No.</b>	17LA377		
<b>Job No.</b>	923267	<b>Job Date</b>	6/25/2020
<b>Witness</b>	H. Mast Exhibits		

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or corrected prior to the time for filing of  
a Petition for Rehearing or the disposition  
of the same.

No. 2—10—0111  
Opinion filed May 6, 2011

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

---

PATRICIA TILSCHNER,	)	Appeal from the Circuit Court
	)	of McHenry County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 08—LA—383
	)	
LOWELL SPANGLER and RALPH M.	)	
RUPPEL,	)	Honorable
	)	Maureen P. McIntyre,
Defendants-Appellees.	)	Judge, Presiding.

---

JUSTICE McLAREN delivered the judgment of the court, with opinion.  
Justice Hutchinson concurred in the judgment and opinion.  
Justice Hudson specially concurred in the judgment, with opinion.

**OPINION**

Plaintiff, Patricia Tilschner, appeals from the trial court's orders dismissing count II of her third-amended complaint and denying her motion to reconsider. Patricia claims on appeal that the trial court erred in concluding that this State has not adopted section 318 of the Restatement (Second) of Torts (1965).<sup>1</sup> We affirm.

Patricia was injured during a party at the home of defendant Lowell Spangler when defendant Ralph Ruppel ignited fireworks. Patricia's third amended complaint contained three counts. Count

---

<sup>1</sup>Patricia raised a similar claim regarding an undifferentiated duty independent of section 318 but abandoned that argument during oral argument.



I alleged common-law negligence against Spangler. Count II alleged negligence against Spangler pursuant to section 318 of the Restatement (Second) of Torts. Count III alleged common-law negligence against Ruppel. Spangler moved to dismiss count II, pursuant to section 2—615 of the Code of Civil Procedure (735 ILCS 5/2—615 (West 2008)). The trial court granted the motion to dismiss with prejudice and denied Patricia's subsequent motion to reconsider. Patricia filed an application for leave to appeal to this court pursuant to Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010), which was denied. Patricia was also denied leave to file a fourth amended complaint. She then voluntarily dismissed count I of the third amended complaint, and the trial court found no just reason to delay enforcement or appeal, pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). This appeal followed.

Patricia now contends that the trial court erred in dismissing count II of her third amended complaint. When a defendant challenges the legal sufficiency of a complaint with a section 2—615 motion to dismiss, all well-pleaded facts alleged in the complaint are taken as true. *King v. Senior Services Associates, Inc.*, 341 Ill. App. 3d 264, 266 (2003). On review of a dismissal pursuant to section 2—615, this court must determine whether the allegations of the complaint, when interpreted in the light most favorable to the plaintiff, sufficiently set forth a cause of action on which relief may be granted. *King*, 341 Ill. App. 3d at 266. The motion should be granted only if the plaintiff can prove no set of facts to support her cause of action. *King*, 341 Ill. App. 3d at 266. As this process does not require the trial court to weigh findings of fact or determine credibility, this court is not required to defer to the trial court's judgment, and we will review the matter *de novo*. *King*, 341 Ill. App. 3d at 266.

To state a cause of action in negligence, a plaintiff must allege facts that establish a duty, a breach of that duty, and proximate causation. *Ryan v. Yarbrough*, 355 Ill. App. 3d 342, 345 (2005).

Patricia alleged that Spangler:

“[o]wed a duty to the Plaintiff and his other invited guests to keep control and care over his property and to protect them against any unreasonable risks of harm known due to acts of a third person under his control, including the Defendant, RALPH RUPPEL, pursuant to the Restatement (Second) of Torts, §318.”

Section 318 of the Restatement (Second) of Torts provides:

“If the actor permits a third person to use land or chattels in his possession otherwise than as a servant, he is, if present, under a duty to exercise reasonable care so to control the conduct of the third person as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if the actor

(a) knows or has reason to know that he has the ability to control the third person, and,

(b) knows or should know of the necessity and opportunity for exercising such control.” Restatement (Second) of Torts §318 (1965).

A restatement is not binding on Illinois courts unless it is adopted by our supreme court. *Eckburg v. Presbytery of Blackhawk of the Presbyterian Church (USA)*, 396 Ill. App. 3d 164, 169 (2009); *In re Estate of Lieberman*, 391 Ill. App. 3d 882, 890 (2009). Thus, we must determine whether our supreme court has adopted section 318 of the Restatement (Second) of Torts; if it has not, Spangler owed no duty to Patricia.

Citing a line of both supreme court and appellate court cases, Patricia argues that section 318 has “unquestionably” been adopted in Illinois. However, this is not the first time that this court has



examined this question and concluded to the contrary. In *Zimring v. Wendrow*, 137 Ill. App. 3d 847, 850 (1985), this court specifically found that “[n]o Illinois case has adopted section 318 of the Restatement (Second) of Torts, upon which plaintiff relies.” Ultimately, we concluded that we “need not consider” the sufficiency of the complaint in relation to section 318. *Zimring*, 137 Ill. App. 3d at 853. In *Elizondo v. Ramirez*, 324 Ill. App. 3d 67, 73 (2001), the plaintiff asserted that section 318 “has been adopted in Illinois and cite[d] two cases in support.” After analyzing those cases—*Cravens v. Inman*, 223 Ill. App. 3d 1059 (1991), and *Teter v. Clemens*, 112 Ill. 2d 252 (1986)—we concluded that “it is unclear whether these cases represent the law in Illinois” (*Elizondo*, 324 Ill. App. 3d at 73-74), and we declined to “express an opinion on whether section 318 represents the law in Illinois” (*Elizondo*, 324 Ill. App. 3d at 74). We note with interest that Patricia cites to *Elizondo* but fails to mention, let alone address, this court’s refusal to find that section 318 had, indeed, been adopted in this state. Patricia now argues, despite our analysis in *Elizondo*, that our supreme court adopted section 318 in *Teter*. We disagree, and we will not revisit our prior analysis and determination in *Elizondo* that there was no clear adoption of section 318 by our supreme court in *Teter*.

While Patricia does not cite to *Cravens*, its ultimate disposition is instructive. In *Cravens*, the First District of the Illinois Appellate Court found a duty and, thus, a claim for negligence, pursuant to section 318 and to *Teter*, in the factual scenario of adults providing alcohol to minor guests who subsequently left in an automobile and were involved in a fatal accident. However, our supreme court in *Charles v. Seigfried*, 165 Ill. 2d 482, 501-02 (1995), concluded that it did “not agree that the views set forth in *Cravens* should be adopted through judicial decision.” This court noted the supreme court’s refusal, in an admittedly different context, to impose liability pursuant to section 318. See *Elizondo*, 324 Ill. App. 3d at 74.

Patricia argues that the supreme court “implicitly” adopted section 318 in *Estate of Johnson v. Condell Memorial Hospital*, 119 Ill. 2d 496, 503-04 (1988), in which the court stated:

“In general, one has no duty to control the conduct of another to prevent him from causing harm to a third party (Restatement (Second) of Torts §315 (1965)), but there are exceptions to this, based on ‘special relationships.’ Sections 315 through 319 of the Restatement (Second) of Torts (1965) describe these relationships. The ‘special relationship’ that the plaintiff alleges existed here that would give rise to a duty to protect another from harm is found in section 319 \*\*\*.”

The court ultimately concluded, “It cannot be reasonably said, based on the complaint’s allegations against Condell, that the hospital assumed a duty of care to Holt under section 319 of the Restatement (Second) of Torts (1965).” *Estate of Johnson*, 119 Ill. 2d at 506-07. Patricia argues that the “clear import” of the decision “is that sections 315-319 have been adopted in Illinois.” She then cites to a similar statement in *Kirk v. Michael Reese Hospital & Medical Center*, 117 Ill. 2d 507, 530 (1987) (“There are types of relationships that give rise to a duty to control a third party’s conduct set out in sections 316 to 319 of the Restatement (Second) of Torts (1965) \*\*\*\*”), to support her conclusion that the supreme court “cited with approval all of the exceptions/duties established in sections 316 through 319.” Patricia is not alone in this argument. The First District of the Illinois Appellate Court has boldly stated that the supreme court has adopted sections 315 through 319. See *Brewster v. Rush-Presbyterian-St. Luke’s Medical Center*, 361 Ill. App. 3d 32, 36-37 (2005) (citing *Estate of Johnson*, 119 Ill. 2d at 503-04); *Iseberg v. Gross*, 366 Ill. App. 3d 857, 862 (2006) (citing only *Brewster*, which expressly mentions sections 315 through 319, but then mysteriously increasing the number of sections adopted, to include sections 314 through 320).

However, we first note that neither *Estate of Johnson* nor *Kirk* (nor, for that matter, *Brewster* nor *Iseberg*) involved a claimed application of section 318. Both *Estate of Johnson* and *Kirk* involved claims arising from alleged improper medical treatment of third parties who subsequently injured the plaintiffs; these claims were analyzed under section 319, which speaks to a duty of those in charge of someone having dangerous propensities. See *Estate of Johnson*, 119 Ill. 2d at 503-04; *Kirk*, 117 Ill. 2d at 530-31. The “most relevant” section in *Brewster* was section 317, which addresses the duty of a master to control the conduct of his servants. *Brewster*, 361 Ill. App. 3d at 37; Restatement (Second) of Torts §317 (1965). In *Iseberg*, the plaintiff did not even allege that any of the Restatement sections applied and imposed a duty on the defendants. *Iseberg*, 366 Ill. App. 3d at 862.

Patricia has failed to cite, and our research has not revealed, a single case since *Teter* in which our supreme court has specifically addressed, or even quoted, section 318 of the Restatement (Second) of Torts. We cannot conclude that our supreme court has adopted—explicitly, implicitly, impliedly, or otherwise—a Restatement section that it has not been called upon to analyze, apply, or adopt. Even the cases upon which Patricia relies do little more than acknowledge the existence of section 318. *Estate of Johnson* says that sections 315 through 319 describe “ ‘special relationships’ ” that form the bases for exceptions to the general rule of section 315. *Estate of Johnson*, 119 Ill. 2d at 503. *Kirk* merely notes that certain types of relationships set out in sections 316 through 319 give rise to a duty to control a third party’s conduct, although none of the types applied there. *Kirk*, 117 Ill. 2d at 530. The mere citation to a cluster of sections, or even the analysis some of the nearby sections, is insufficient to establish the adoption of a restatement section.

The supreme court has addressed more thoroughly and deeply other restatement sections and specifically did *not* adopt them. For example, in a case examining the difference between void and

voidable judgments, the supreme court compared its conclusions with those that it would have reached if the criteria of section 12 of the Restatement (Second) of Judgments were applied to the facts of the case. *In re Marriage of Mitchell*, 181 Ill. 2d 169, 176 (1998). The court noted that the result in the case was “consistent with the trend of modern authority” as exemplified by the Restatement (Second) of Judgments. *Mitchell*, 181 Ill. 2d at 175. The court then quoted section 12 of the Restatement (Second) of Judgments and applied the criteria of that section to the facts of the case. *Mitchell*, 181 Ill. 2d at 176. After determining that adopting the view expressed in the Restatement would require a re-examination of existing case-law analysis, the court casually noted that “[t]he parties [did] not ask us to adopt the rule expressed in the Restatement, however, and therefore we need not decide in this case whether to take that step.” *Mitchell*, 181 Ill. 2d at 177. In *Mitchell*, the court explicitly declined to adopt a restatement section that it specifically quoted, applied to the facts of the case, analyzed, and compared to existing case law, because the parties did not ask for it. Here, Patricia cannot cite to a case wherein the court even cited to section 318, let alone provided the type of analysis that it did in *dictum* in *Mitchell*. With such meager authority, we cannot find the adoption of a restatement section.

Patricia similarly attempts to find adoption of section 318 in this court’s decision in *Duncan v. Rzonca*, 133 Ill. App. 3d 184 (1985). Patricia’s specific claim is that the *Duncan* court adopted section 316 of the Restatement and that, since sections 316 through 319 are “uniformly discussed together,” there is “simply no logical explanation for why section 316 but not section 318 would be adopted in Illinois.” We first note that this court does not have the authority to adopt a restatement section; as we have already stated, a restatement is binding on Illinois courts *only if it is adopted by our supreme court*. See *Eckburg*, 396 Ill. App. 3d at 169; *Lieberman*, 391 Ill. App. 3d at 890. In the absence of Illinois law, we often deem secondary sources, such as the Restatement (Second) of

Torts, to be persuasive.<sup>2</sup> *Eckburg*, 396 Ill. App. 3d at 169. A restatement is a policy statement; this court does not adopt policy, it applies present law to the facts of the case before it. Further, this argument relies on the same fallacy as her prior argument: the “adoption” of a section includes the adoption of other sections “uniformly discussed together.” This argument is not only a *non sequitur*, it is irrational as well. *Duncan* does not support Patricia’s cause.

The restatement that we adopt today is that our supreme court has not adopted section 318 of the ~~Restatement (Second) of Torts~~. Therefore, count II of Patricia’s third-amended complaint, interpreted in the light most favorable to her, fails to allege a duty recognized by our supreme court and fails to set forth a cause of action on which relief may be granted. The trial court did not err in granting Spangler’s section 2—615 motion to dismiss with prejudice.

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<sup>2</sup>“A secondary source is not the law. It’s a commentary on the law. A secondary source can be used for three different purposes: it might educate you about the law, it might direct you to the primary law, or it might serve as persuasive authority. Few sources do all three jobs well. The important classes of legal secondary sources include: treatises, periodical articles, legal encyclopedias, ALR Annotations, *Restatements*, and Looseleaf services. \*\*\*

\* \* \*

### Restatements

The restatements were developed by legal scholars initially to restate the law, and currently to describe what the law should be. In either case, Restatements are very persuasive although they are not very good at describing the law. They can serve as adequate law finders.” (Emphasis added.) *Secondary Sources*, Yale Law School, Lillian Goldman Law Library, <http://m-library.law.yale.edu/content/secondary-sources>.

For these reasons, the judgment of the circuit court of McHenry County is affirmed.

Affirmed.

JUSTICE HUDSON, specially concurring:

I agree with much of the majority's analysis in this case as well as the result at which it arrives. However, I would prefer to refrain from making sweeping and unnecessary statements about the authority of this court. It is well established that a court should avoid constitutional questions when a case can be decided on other grounds. *In re Detention of Swope*, 213 Ill. 2d 210, 218 (2004); *Beahringer v. Page*, 204 Ill. 2d 363, 370 (2003). The scope of the authority of this court is a constitutional matter. See *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002).

In this case, the majority rejects plaintiff's contention that this court has adopted section 318 of the Restatement (Second) of Torts, finding plaintiff's argument "irrational." Slip op. at 8. This finding should resolve this question. The majority, nevertheless, goes on to hold that this court does not have the authority to adopt a section of a restatement. It is unnecessary to consider whether this court has such authority in light of the majority's holding that nothing this court previously did would constitute an adoption of section 318. As I believe it improper to address the issue of the authority of this court, I do not join this portion of the majority's opinion.

# United States of America

2-10-0111

PATRICIA TILSCHNER,

State of Illinois,  
Appellate Court,  
Second District,

ss.

v.

Plaintiff-Appellant,

LOWELL SPANGLER and RALPH M. RUPPEL,

Defendants-Appellees.


*I, ROBERT J. MANGAN, Clerk of the Appellate Court, in and for said Second Judicial District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true, full and complete copy of the decision of the said Appellate Court in the above entitled cause of record in my said office.*

*IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the said Appellate Court, in Elgin, in said State, this*

6th day of May, A.D. 20 2011

  
Clerk Appellate Court Second District

(RO-2131 — 5M — 3/02)

**From:** George Flynn gflynn@karballaw.com   
**Subject:** Re: Dulberg  
**Date:** June 19, 2020 at 2:56 PM  
**To:** Julia Williams juliawilliams@clintonlaw.net



Ok glad to hear. Thanks Julia.

**George Flynn**


**Karbal | Cohen | Economou | Silk | Dunne | LLC**

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On Jun 19, 2020, at 2:54 PM, Julia Williams <juliawilliams@clintonlaw.net> wrote:

Thanks George. We are still on. This will be the first remote deposition that I have taken so I am still working on figuring out the exhibits. I believe that I can upload them to the US Legal system and then share them during the deposition. But, if not, I will be sure to have them to you no later than Tuesday by 5pm.

Best Regards,

Julia Williams  
Of Counsel  
The Clinton Law Firm  
111 W. Washington, Ste. 1437  
Chicago, IL 60602  
P: 312.357.1515  
F: 312.201.0737  
[juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)

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On Jun 19, 2020, at 2:54 PM, George Flynn <gflynn@karballaw.com> wrote:

Julia: I just received your notice of attorney lien. Will you still be taking the dep next week?

My experience with receiving liens at this stage of litigation (in a high percentage of cases) is that a withdrawal shortly follows. Hopefully not the case here, but just making sure we are still on for Mast's dep.

Thanks

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**

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Chicago, IL 60606

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<fax\_b47779bc-2f12-4a09-9ce3-87f4947c34ef.png> F: (312) 431-3670

<envelope\_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: [gflynn@karballaw.com](mailto:gflynn@karballaw.com)


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**From:** George Flynn [gflynn@karballaw.com](mailto:gflynn@karballaw.com)   
**Subject:** RE: Dulberg  
**Date:** June 26, 2020 at 1:13 PM  
**To:** Julia Williams [juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)

GF

Sure, feel free to give me a call.

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**  
150 S. Wacker Drive  
Suite 1700  
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**From:** Julia Williams <[juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)>  
**Sent:** Friday, June 26, 2020 12:13 PM  
**To:** George Flynn <[gflynn@karballaw.com](mailto:gflynn@karballaw.com)>  
**Subject:** Re: Dulberg

Dear George,

Thank you for the follow up. I am working on the production today. Are you around on Monday—can we chat then?

Best Regards,

Julia Williams  
Of Counsel  
The Clinton Law Firm  
111 W. Washington, Ste. 1437  
Chicago, IL 60602  
P: 312.357.1515  
F: 312.201.0737  
[juliawilliams@clintonlaw.net](mailto:juliawilliams@clintonlaw.net)



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On Jun 25, 2020, at 12:31 PM, George Flynn <[gflynn@karballaw.com](mailto:gflynn@karballaw.com)> wrote:

-----

Julia:

Just wanted to write while it is fresh in my mind, but I'd like to close the dangling issues from your client's deposition, including the production of communications with Mr. Gooch in view of the "discovery rule" issues.

Please advise

**George Flynn**

**Karbal | Cohen | Economou | Silk | Dunne | LLC**

150 S. Wacker Drive

Suite 1700

Chicago, IL 60606

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<envelope\_5540fafc-2f13-4c5f-af64-a2c20113037b.png> E: [gflynn@karballaw.com](mailto:gflynn@karballaw.com)

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Dear Paul,

Best Regards,

\_\_\_\_\_



\_\_\_\_\_



\_\_\_\_\_

\_\_\_\_\_

3. Similar to the last question, Have the objections in the Mast deposition been worked out or ruled on by judge Meyer?

There has been no motion practice on the issue and thus, there is no ruling. Your future counsel will need to bring that before the Judge at some point.

\_\_\_\_\_


 The University of North Carolina at Chapel Hill

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_