



2-25-0054

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Transaction ID: 2-25-0054
File Date: 7/25/2025 4:32 PM

Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT

No. 2-25-0054

**IN THE ILLINOIS APPELLATE COURT
SECOND JUDICIAL DISTRICT**

NIKKI SKARBEEK,)	
)	Rules 301, 303
<i>Plaintiff-Appellant,</i>)	
)	
vs.)	No.: 2024 LA 468
)	
WOODMAN'S FOOD MARKET, INC.,)	Honorable Luis S. Berrones,
)	Judge Presiding.
<i>Defendant-Appellee.</i>)	

AMICUS CURIAE BRIEF IN SUPPORT OF THE PLAINTIFF

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Rules and Legislation Involved

Supreme Court Rule 9 adopted June 22, 2017, effective July 1, 2017

Rule 9. Electronic Filing of Documents

(a) **Electronic Filing Required.** Unless exempt as provided in paragraph (c), all documents in civil cases shall be electronically filed with the clerk of court using an electronic filing system approved by the Supreme Court of Illinois.

(d) Timely Filing. Unless a statute, rule, or court order requires that a document be filed by a certain time of day, a document is considered timely if submitted before midnight (in the court's time zone) on or before the date on which the document is due. A document submitted on a day when the clerk's office is not open for business will, unless rejected, be file stamped as filed on the next day the clerk's office is open for business. The filed document shall be endorsed with the clerk's electronic file mark setting forth, at a minimum, the identification of the court, the clerk, the date, and the time of filing.

(1) If a document is untimely due to any court-approved electronic filing system technical failure, the filing party may seek appropriate relief from the court, upon good cause shown.

(2) If a document is rejected by the clerk and is therefore untimely, the filing party may seek appropriate relief from the court, upon good cause shown.

Adopted June 22, 2017, eff. July 1, 2017

Supreme Court Rule 9 as amended May 21, 2025, effective immediately

Rule 9. Electronic Filing of Documents

(d) Timely Filing. Unless a statute, rule, or court order requires that a document be filed by a certain time of day, a document is considered timely if submitted before midnight (in the court's time zone) on or before the date on which the document is due. A document submitted on a day when the clerk's office is not open for business will, unless rejected, be file stamped as filed on the next day the clerk's office is open for business. The filed document shall be endorsed with the clerk's electronic file mark setting forth, at a minimum, the identification of the court, the clerk, the date, and the time of filing. If a corrected version of the rejected document is filed but would be deemed untimely as a result of the earlier rejection, the filing party may file a motion for original submission date as follows:

(1) Rejection.

(A) If a document is rejected for any reason, the filing party may, within 5 court days of the notice of rejection, file a motion requesting that the later-filed document be deemed to have been filed on the original submission date. The motion shall set forth the following:

(i) The date of the original submission,

(ii) The date of the rejection,

(iii) The reason for the rejection, and

(iv) The document to be deemed filed on the date of the failed submission, attached as an exhibit. The document shall contain no changes from the original except to correct the error identified by the clerk as the reason for the rejection, if applicable.

(B) The court shall grant a timely motion for original submission date that satisfies the foregoing requirements and enter an order establishing that the effective date of filing of the corrected document shall be the date of the original submission. If the filer establishes that the original filing was rejected for reasons not in conformity with those permitted under Rule 9(f), the corrected document need not vary from the original submission.

(f) Rejections. Documents filed electronically may be rejected by the clerk as authorized by the Electronic Filing Rejection Standards for circuit courts and courts of review, as published on the illinoiscourts.gov website.

**Supreme Court Rule 9 as amended June 3, 2025, effective
immediately**

(f) Rejections. Documents filed electronically may be rejected by the clerk *only* as authorized by the Electronic Filing Rejection Standards for circuit courts and courts of review, as published on the illinoiscourts.gov website. *Absent Supreme Court approval, no court shall enter rules or general orders that provide for rejection reasons additional to or different from those listed in the Electronic Filing Rejection Standards.*

Senate Bill 328 as it passed the Senate

Section 5. The Code of Civil Procedure is amended by changing Section 2-616 as follows:

735 ILCS 5/2-616

Sec. 2-616. Amendments.

- (a) At any time before final judgment, amendments may be allowed on just and reasonable terms, introducing any party who ought to have been joined as plaintiff or defendant, dismissing any party, changing the cause of action or defense or adding new causes of action or defenses, and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought or the defendant to make a defense or assert a cross claim.
- (b) The cause of action, cross claim or defense set up in any amended pleading shall not be barred by lapse of time under any statute or contract prescribing or limiting the time within which an action may be brought or right asserted, if the time prescribed or limited had not expired when the original pleading was filed, and if it shall

appear from the original and amended pleadings that the cause of action asserted, or the defense or cross claim interposed in the amended pleading grew out of the same transaction or occurrence set up in the original pleading, even though the original pleading was defective in that it failed to allege the performance of some act or the existence of some fact or other matter which is a necessary condition precedent to the right of recovery or defense asserted, if the condition precedent has in fact been performed, and for the purpose of preserving the cause of action, cross claim or defense set up in the amended pleading, and for that purpose only, an amendment to any pleading shall be held to relate back to the date of the filing of the original pleading so amended.

(b-5) If a clerk's office rejects an electronically submitted document for any of the reasons stated in the electronic Filing Rejection Standards as provided by the Supreme Court Rules, the later filing of the original document with the error or errors corrected relates back to the earlier date of the electronic submission of the original document. Any submission of a corrected original document as set forth in this subsection must be made within 7 business dates of the date that the clerk's office served notice upon the party it has rejected the submitted document.

(b-10) If a clerk's office does not file an electronically submitted document because of a technical failure of any court-approved electronic filing system, the later filing of that document relates back to the date the original document was submitted.

.....

19th Judicial Circuit Local Rule 2-2.09

2-2.09 Compliance with Supreme Court Rule 222

A Plaintiff shall comply with the disclosure requirements of Supreme Court Rule 222 at the time the Complaint is filed, and each Defendant shall so comply within the time allotted by the Case Management Order.

Supreme Court Rule 222

Rule 222. Limited and Simplified Discovery in Certain Cases

(a) Applicability. This rule applies to all cases subject to mandatory arbitration, civil actions seeking money damages not in excess of \$50,000 exclusive of interest and costs, and to cases for the collection of taxes not in excess of \$50,000. This rule does not apply to small claims, ordinance violations, actions brought pursuant to 750 ILCS (FAMILIES), and actions seeking equitable relief. Except as otherwise specifically provided by this rule, the general rules governing discovery procedures remain applicable to cases governed by this rule.

(b) Affidavit re Damages Sought. Any civil action seeking money damages shall have attached to the initial pleading the party's affidavit that the total of money damages sought does or does not exceed \$50,000. If the damages sought do not exceed \$50,000, this rule shall apply. Any judgment on such claim which exceeds \$50,000 shall be reduced posttrial to an amount not in excess of \$50,000. Any such affidavit may be amended or superseded prior to trial pursuant to leave of court for good cause shown, and only if it is clear that no party will suffer any prejudice as a result of such amendment. Any affidavit filed pursuant hereto shall not be admissible in evidence at trial.

(c) Time for Disclosure; Continuing Duty. The parties shall make the initial disclosure required by this rule as fully as then possible in accordance with the time lines set by local rule, provided however that if no local rule has been established pursuant to Rule 89 then within 120 days after the filing of a responsive pleading to the complaint, counter-complaint, third-party complaint, etc., unless the parties otherwise agree, or for good cause shown, if the court shortens or extends the time. Upon service of a disclosure, a notice of disclosure shall be promptly filed with the court. The duty to provide disclosures as delineated in this rule and its subsections shall be a continuing duty, and each party shall seasonably supplement or amend disclosures whenever new or different information or documents become known to the disclosing party. All disclosures shall include information and data in the possession, custody and control of the parties as well as that which can be ascertained, learned or acquired by reasonable inquiry and investigation.

(d) Prompt Disclosure of Information. Within the times set forth in section (c) above, each party shall disclose in writing to every other party:

- (1) The factual basis of the claim or defense. In the event of multiple claims or defenses, the factual basis for each claim or defense.
- (2) The legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities.
- (3) The names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call at trial with a designation of the subject matter about which each witness might be called to testify.
- (4) The names, addresses, and telephone numbers of all persons whom the party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to the action, and the nature of the knowledge or information each such individual is believed to possess.
- (5) The names, addresses, and telephone numbers of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements.
- (6) The identity and address of each person whom the disclosing party expects to call as an expert witness at trial, plus the information called for by Rule 213(f).
- (7) A computation and the measure of damages alleged by the disclosing party and the document or testimony on which such computation and measure are based and the names, addresses, and telephone numbers of all damage witnesses.
- (8) The existence, location, custodian, and general description of any tangible evidence or documents that the disclosing party plans to use at trial and relevant insurance agreements.
- (9) A list of the documents or, in the case of voluminous documentary information, a list of the categories of documents, known by a party to exist whether or not in the party's possession, custody or control and which that party believes may be relevant to the subject matter of the action, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the dates(s) upon which those documents will be made, or have been made, available for inspection and copying. Unless good cause is stated for not doing so, a copy of each document listed shall be served with the disclosure. If production

is not made, the name and address of the custodian of the document shall be indicated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

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ARGUMENT

There is no rule or standard directing court clerks to file or reject electronically submitted documents within a certain time. In this case, a complaint submitted the day before the statute of limitations expired was rejected the day after the statute expired. Even though plaintiff corrected the “error” perceived by the clerk within two hours of the rejection, the corrected document was file stamped on the day after the statute expired. The trial court denied plaintiff’s claim that the clerk wrongly rejected the submitted document and denied her claim that there was good cause for the failure to attach a *Supreme Court Rule 222* affidavit to the complaint. Defendant’s statute of limitations dismissal motion was granted.

The problem that this court needs to address was created by *Supreme Court Rule 9(d)(2)* that was in effect from July 1, 2019, until May 21, 2025. The provision requires a party whose submitted pleading was “rejected” by the clerk and is therefore untimely, to show “good cause” to obtain “appropriate relief.” The revised *Rule 9(d)*, effective May 21, 2025, eliminates the “good cause” requirement. Now, a party who submits a document that is rejected by a clerk for any reason may file a motion within five court days attaching the “corrected” document and the court “shall grant” the motion for “original submission date.” In other words, the file stamped date will reflect the original date of submission.

If the revised rule had been in effect last year, plaintiff's complaint would not have been dismissed, and the lawsuit would be resolved on its merits. Instead, because of poorly conceived rule that was interpreted unreasonably by the trial court, plaintiff's suit was dismissed as time barred. This case will only be decided on its merits if this court reverses the dismissal order.

The vice of the former *Rule 9(d)(2)* affects all parties to state court litigation. There are important time limitations that affect defendants and plaintiffs. Our organizations agree that innocuous, clerical, confused, or forgetful errors by lawyers or their staff submitting electronic pleadings should not cause binding legal judgments such as dismissals of complaints, notices of appeal, or the like because a clerk rejected the document after the time limitation expired. Similarly, and as implicated by the facts of this case, it is improper for clerks to conclusively determine that a party's submission does not comply with substantive legal requirements outside of the adversarial process. That power is conferred on judges as all defects in pleadings are determined by motion under 735 *ILCS 5/2-615* and defects in other documents should be corrected upon motion of the opposing party or on order of the court. The clerks' indispensable ministerial role in the civil justice system should not include making legal judgments, as the clerk did here, that the complaint was insufficient. This is especially true when such a trivial violation has dispositive effect that the court below failed to excuse.

1. ELECTRONIC FILING OF PLEADINGS AND “REJECTED SUBMISSIONS”

Enacted in 2017, *Supreme Court Rule 9* created the requirement that all filing in civil cases be done electronically with exceptions not applicable here. Before then, lawyers or their staff typically brought their pleadings or other documents to the courthouse, submitted them to a clerk, and the clerk filed the papers. As a consequence, the lawyer or staff left the clerk’s office with a file stamped copy of the pleading or other document on the day of submission.

When the Supreme Court wisely elected to institute electronic filing and case management of court records, it made certain choices that caused the system to be difficult and sometimes painful for practitioners and their staff. The Court gave clerks the power to reject pleadings that a lawyer submits electronically for limitless reasons. Since the institution of electronic filing, clerks are not required to accept or reject a submission for filing within any given number of minutes, hours, or days. This system allows for the very real possibility that a lawyer submitted a document the day before a deadline but only learns that the clerk has rejected it days after the deadline has expired.

In that head-slapping event, the lawyer whose submission was rejected must bring a motion and try to establish that there was “good cause” for the “error” in the submitted document. Here, plaintiff submitted a complaint June 26, 2024, without a *Rule 222* affidavit asserting that the damages claimed exceed \$50,000. The statute of limitations expired June

27. On the afternoon of June 28, a clerk notified plaintiff's counsel that the complaint was rejected. Within two hours, plaintiff's counsel corrected the "error," and the complaint was filed on June 28. C22-C23. Plaintiff's motions for relief and motion for reconsideration were denied and defendant's motion to dismiss was granted. C 114, C 174.

2. THE HISTORY OF RULE 9 AND ATTEMPTS TO CURE IT

The sole subject of *Rule 9* is electronic filing of documents in civil cases. In the eight years since adoption, it has been amended nine times. The provision relevant to this case, *Rule 9(d)(2)* was unchanged from the original version until May 21, 2025. The original version of the Rule states:

(d) Timely Filing. Unless a statute, rule, or court order requires that a document be filed by a certain time of day, a document is considered timely if submitted before midnight (in the court's time zone) on or before the date on which the document is due....

(2) If a document is rejected by the clerk and is therefore untimely, the filing party may seek appropriate relief from the court, upon good cause shown.

Efforts to change *Rule 9(d)(2)* began in January 2024 after the publication of *Kilpatrick v. Baxter Healthcare*, 2023 IL App (2d) 230088. In that case, also arising from the Lake County Circuit Court, instead of placing the lawyer's ARDC number on the submitted complaint, the lawyer's Cook County firm ID number was inserted. The clerk rejected the submission the day after the statute expired. The trial court ruled that there was no "good cause" for the error; the case was dismissed. The dismissal was affirmed by this court. The plaintiff lost her case because of a clerical error for which she could not show "good cause." There is rarely "good cause"

for a clerical error—it is just an error. In that case, as in this case, the error was insignificant and the ramifications catastrophic. The result in *Kilpatrick* was not just nor would the result here be just if the trial court were affirmed.

A proposal to change *Rule 9* was sent to the Supreme Court Rules Committee on January 16, 2024. *C162*. It was docketed as Proposal 24-01 and urged adoption of the federal rule on point, “[t]he clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.” *FRCP 5(d)(4)*; *C162*. The Rules Committee did not take any action on the proposal. Justice Doherty, Chair of the Supreme Court’s e-Business Policy Board, advised by letter that the Board had been wrestling with this subject “for quite some time” and that the Board finalized a draft rule that would ameliorate some of the harshness of *Rule 9(d)(2)*. *C162-C163*. Justice Doherty sent his letter April 25, 2024. *C162*.

The only change to *Rule 9* in 2024 was to *Rule 9(f)*. It incorporates newly created “Electronic Filing Rejection Standards” for circuit courts and for courts of appeal. *C 165- C170*. For circuit courts, the standard gives 22 specific reasons a clerk can reject a document submitted; there is also a catchall provision permitting rejection when none of the listed reasons are applicable. *C170*. The draft rule to ameliorate the harshness of *Rule 9(d)(2)* that Justice Doherty wrote about in April 2024 was nowhere to be found.

Before the July 2024 Supreme Court Rules Committee hearing, Patrick Eckler submitted a written comment regarding Proposal 24-09 that sought a non-substantive change to *Rule 9(c)*.¹ Mr. Eckler directed his comment to the deficiencies of *Rule 9(d)* and the different ways that clerks had been using their authority to reject pleadings. He implored the committee to take steps to solve the problems caused by rejected pleadings. The Committee did not act on his request.

Senate Bill 328 was introduced and had its first reading in the Senate January 24, 2025.² The bill's short description shows that it was intended to solve the "rejected submission" problem by amending *735 ILCS 5/2-616(b)* to permit the corrected document to relate back to the time the original document was submitted

... if a clerk's office rejects an electronically submitted document for any of the reasons stated in the Electronic Filing Rejection Standards as provided by the Supreme Court Rules, the later filing of the original document with the error or errors corrected relates back to the earlier date of the electronic submission of the original document. *Id.*

The bill was approved by the Senate 56-0 on April 10, 2025. The House Civil Committee approved the bill 20-0 on April 30, 2025.

Without any public proposal or public notice, the Supreme Court adopted significant revisions to *Rule 9(d)* on May 21, 2025, effective May

¹ <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/c3690314-e77f-4f7c-864a-21b6b49350e0/Eckler%20Comment%20on%20Prop%2024-09.pdf> (last visited July 17, 2025)

² <https://www.ilga.gov/legislation/BillStatus.asp?DocNum=328&GAID=18&DocTypeID=SB&LegId=157813&SessionID=114&GA=104> (last visited July 17, 2025)

21. Had those provisions been in effect last year, this case would not have been dismissed as untimely. The revised rule states in pertinent part:

(d) Timely Filing. Unless a statute, rule, or court order requires that a document be filed by a certain time of day, a document is considered timely if submitted before midnight (in the court's time zone) on or before the date on which the document is due.... *If a corrected version of the rejected document is filed but would be deemed untimely as a result of the earlier rejection, the filing party may file a motion for original submission date as follows:*

(1) Rejection.

(A) If a document is rejected for any reason, the filing party may, within 5 court days of the notice of rejection, file a motion requesting that the later-filed document be deemed to have been filed on the original submission date. The motion shall set forth the following:

(i) The date of the original submission,

(ii) The date of the rejection,

(iii) The reason for the rejection, and

(iv) The document to be deemed filed on the date of the failed submission, attached as an exhibit. The document shall contain no changes from the original except to correct the error identified by the clerk as the reason for the rejection, if applicable.

(B) *The court shall grant a timely motion for original submission date that satisfies the foregoing requirements and enter an order establishing that the effective date of filing of the corrected document shall be the date of the original submission.... (Emphasis added).*

While the revised *Rule 9(d)* is most welcome, it does not cure the essential problem of clerks practicing law. If a submitted document is improper in form, that should be brought to the filer's attention by opposing counsel or by the court. It should not be a basis for the clerk to refuse to file the document. The improper form may be *de minimis* and not result in any legal activity. It may not even warrant a phone call from opposing counsel to say, "you should have put your ARDC number on the

complaint.” If a deficiency in the submission matters to the other side, there will be a motion. If a deficiency matters to the court, it will bring it to the lawyer’s attention.

Rejecting a submitted pleading sometimes days later is a power too awesome for a clerk to have and does not promote the ends of justice. The plain reading of *Lake County Local Rule 2-2.09* demonstrates that the rule does not vest the clerk with authority to reject a submitted complaint that does not have a *Rule 222* affidavit. Yet, the clerk, with judicial imprimatur, has taken on that power not vested to it. An even more recent amendment to *Rule 9* prohibits clerks from rejecting a submitted document for purported non-compliance with a local rule or general order. *Rule 9(f), eff. June 3, 2025*. The Court is moving in the right direction.

In contrast to the *ultra vires* action of this clerk, which was not subject to the adversarial process, if a trial court found following a motion that a *Rule 222* affidavit was required, then the plaintiff would have almost certainly been granted time to file the affidavit. It would almost certainly have been an abuse of discretion for a trial judge to have dismissed a complaint for failing to attach a *Rule 222* affidavit. Our research finds no case allowing a dismissal with prejudice of a complaint for failing to attach a *Rule 222* affidavit. Moreover, *Dovalina v. Conley*, 2013 IL App (1st) 103127 ¶18, held that *Rule 222* “shall not apply” if the complaint seeks more than \$50,000. The complaint in this case sought more than that amount. *C14*. The Clerk of the Circuit Court of Lake County should have no greater

power than that of a judge. Further, the determination of a clerk should not be given greater weight than that which is accorded to a judge.

This power under the rejection standards could apply to other submissions including those of defendants, the rejection of which could have case dispositive result, but which should be dealt with by the lawyers and the judge. Specifically, under rejection standard entitled “Rejection by Clerk,” a clerk could conceivably review an answer to a verified complaint and find it wanting for the absence of a verification as required by 735 *ILCS* 5/2-605. Similarly, the clerk could strike an answer for failing to attach an affidavit claiming want of knowledge as provided under 735 *ILCS* 5/2-610(b). The absence of the verification and affidavit, respectively, are potentially case dispositive as they can work admissions by the defendant. Allowing a clerk to bring such deficiencies to the attention of a defendant in those instances prejudices the plaintiff. The clerk is thereby promoted from the necessary and important ministerial role of filing and maintaining the court’s records, to being a judge. However, if the issue were raised, as it should be by the opposing counsel or the court, the party filing the deficient pleading would almost certainly be given time to correct the error and this court would likely find an abuse of discretion if such time were not given.

That such a power has had unjust consequences is obvious from the Supreme Court’s revised rule now giving the lawyer a grace period to rectify what the clerk perceived as an error. The former rule’s “good cause”

standard is no longer supported by the Supreme Court, we submit, in part because the rule was not reasonable nor was it reasonably administered.

CONCLUSION

The record in this shows how arbitrary a clerk's action can be. Sometimes the absence of a *Rule 222* affidavit results in a rejection, most of the time it does not. *C136*. Under the published *Electronic Filing Rejection Standards Circuit Courts*, the failure to attach a *Rule 222* affidavit is not a listed basis for rejection. The clerk in this case went beyond his or her authority in rejecting the document, and, at least as importantly, did not act on the submitted document for two days. Even if the clerk rejected the document unnecessarily, had that act been done promptly, the plaintiff's lawyer could have corrected it right away to preserve his client's right to have her case decided on the merits.

The judgment below is an injustice and should be corrected by reversal.



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Rule 341(c) Certificate of Compliance

I certify that this brief conforms the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, and the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to brief under Rule 342 (a), is ten pages.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Donald P. Eckler".

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vs.)	No.: 2024 LA 468
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WOODMAN'S FOOD MARKET, INC.,)	Honorable Luis S. Berrones,
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<i>Defendant-Appellee.</i>)	

NOTICE OF FILING AND PROOF OF SERVICE

I, Lisa Williams, a non-attorney, certify (under penalties provided by law pursuant to 735 ILCS 5/1-109, that the statements set forth herein are true and correct) that we electronically filed Illinois Trial Lawyers' Association and Illinois Defense Counsel's Amicus Curiae Brief in Support of the Plaintiff with the Clerk of the Appellate Court, Second District, on **July 25, 2025**, and that a copy of same was served via the Odyssey EFile & Serve System and Email to all Attorneys of Record on **July 25, 2025**, addressed as follows:

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