Rule 224: A Powerful Discovery Tool You Are Not Using

by G. Grant Dixon III

What if I told you that you could get information from a potential defendant about an incident without having to file a law suit, would you be interested? What if I told you that you could force a potential defendant to tell you who might be responsible for your client’s injuries, would you be interested? What if I told you that you could even depose potential defendants before disclosing your theory of the case, would you be interested?

All of these things and more are available to a lawyer properly using Illinois Supreme Court Rule 224. Illinois Supreme Court Rule 224 empowers lawyers to obtain important information from a potential defendant before disclosing their theory of the case. Yet most lawyers don’t use the tool because they are unfamiliar with it and know less about how it works. As will be discussed below, the rule is simple and, in the right case, gives lawyers a powerful tool to help determine who might be at fault for their client’s injuries.

I. The Basics of Rule 224

The text of Illinois Supreme Court Rule 224(a)(i) provides that, “A person or entity who wishes to engage in discovery for the sole purpose of ascertaining the identity of one who may be responsible in damages may retaining the identity of one who may be responsible in damages may recovering for the sole purpose of ascertaining from a potential defendant before discovery from a potential defendant before discovering the document is called “respondent.”

The document must request an order “authorizing the petitioner to obtain such discovery.” That order shall limit discovery to the “identification of responsible persons and entities.” The text of the rule also allows depositions of both known and unknown persons.

Once filed, the petition must be served on the respondent like a summons using a form specified in the Rule (or substantially similar one). The court may also permit order different service methods, even service by publication. Fourteen days notice is required but the court can order less notice. The order under a Rule 224 petition “automatically expires after 60 days.” The person requesting the information pays for it.

The supreme court gave Rule 224 some teeth as well. All sanctions available under Illinois Supreme Court Rule 219 also explicitly apply to Rule 224. Thus, monetary sanctions are available to encourage the reluctant respondent. A petitioner need not establish they have a cause of action in order to file the petition, only that there might be a claim.

So long as the requirements of the Rule are met, a court has only limited discretion to deny the petition. Petitioner can appeal the order denying a Rule 224 petition and the appellate court reviews the order de novo. A respondent to a Rule 224 petition cannot appeal an order granting the petition. Their only remedy is to refuse to comply, accept a contempt order, and then appeal the contempt order.

II. Distinct from Respondent in Discovery

Many practitioners confuse Rule 224 with the Respondent in Discovery statute, 735 Ill.Comp.Stat. § 5/2-402. There are, however, several key differences in the rules.

First, a 402 petition must be used in conjunction with another pleading. In other words, you can only use 402 when there is already a named defendant in the case. Most commonly, a 402 petition is used in a medical malpractice case where some defendants are named but other entities are named as respondents in discovery. Indeed, the statute was created for that purpose. A Rule 224 petition has no such attended pleading requirement and should be used in a separate action.

Second, a 402 petition extends the relevant statute of limitation while the petition is pending. A Rule 224 petition does not extend the statute of limitation and offers no statute of limitation protection.

Third, a 402 petition requires conversion of a Respondent into a “real” defendant or dismissal with prejudice. A 224 petition requires no conversion. Once compliance with the petition is achieved, the Rule 224 petition is dismissed and no further litigation is required.

III. Rule 224 Envisions Extensive Pre-suit discovery

The committee comments to Rule 224 continued on page 28
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224 show the breadth of the supreme court’s intent with the rule. The committee comments to Rule 224 state, “The rule facilitates the identification of potential defendants through discovery depositions or through any of the other discovery tools set forth in Rules 201 through 214.” Ill. Sup. Ct. R. 224 (emphasis added).

This “any of the other discovery tools” language is critical. The other discovery tools available include written interrogatories (Rule 213), production of documents (Rule 214), and inspection of objects and tangible things (Rule 214). The rule itself even mentions depositions as a part of the process. In fact, ANY discovery tool you could use in a “regular” case you can use in a petition for discovery under Rule 224.

This breadth of the rule is most commonly ignored by practitioners. A filing of a Rule 224 petition should include requests for all of the discovery tools available. This would include interrogatories, document production requests, and depositions. Each is allowed and should be used.

IV. Common Objections

Most opponents to a Rule 224 petition will claim that once “identity” is given, nothing more is required. In others words, they will claim that once you know the “who” the process ends. However, not one Illinois case has ever held that a Rule 224 petition simply requires identification of names of potential defendants and nothing more.

In fact, that notion was clearly abolished in Beale v. EdgeMark Financial Corporation. In Beale, petitioner had pledged certain stock. He claimed it was sold as part of a plot to deprive him of value on that sale. Mr. Beale filed a 224 petition seeking information about what certain people at Edge-Mark knew about the pending sale of the company. Respondent claimed that because Mr. Beale knew who the people were, his rights under Rule 224 ended.

The appellate court shot down that argument. It looked at the text of the rule itself and held, “[e]mphasis should not be placed on the word ‘identity’ alone but, rather, on the entire phrase ‘identity of one who may be responsible,’” when applying Rule 224. Rather, a 224 petition has been precluded only where the “connection of each individual to the injury involved was known.” The critical question is, therefore, not the name of the person but the connection. The Beale court further noted,

“In Kamelgard v. Am. Coll. of Surgeons, a petitioner, physician and member of the American College of Surgeons...
geons, sought to learn the names of three physicians who investigated him in response to a complaint about him. The trial court conducted an in camera review of certain documents and then ultimately dismissed the petition, apparently based on the Medical Studies Act objections of respondent. The appellate court ruled that the petitioner was entitled to a hearing on the scope of the petition regardless of the Medical Studies Act concerns.

Respondents will cite to Maxon v. Ottawa Publishing Company. There, petitioner sought to learn the identities of those who defamed him in an anonymous newspaper website posting. Respondents claimed that the postings were protected free speech and, thus, the petition for discovery could not be allowed. The trial court agreed and dismissed the petition. What is absolutely clear is that the appellate court reversed that decision. It held that there were sufficient protections in the Rule and the Code of Civil Procedure to protect the Constitution and free speech.

What is less clear is the value of some other statements the court made. The court did state that a Rule 224 petition is not inapplicable in cases where the identity of any potential defendant is already known. However, this statement is classic dicta as it was not part of any holding or even relevant to the ultimate decision in the case. As obiter dictum, the statement has no precedential value.

The case cited by the Maxon court was Guertin v. Guertin. That case involved allegations that two individuals had exerted undue influence over an elderly man, conning him into leaving the bulk of his estate to them. The plaintiff there did not file a petition under Illinois Supreme Court Rule 224 but rather filed an “unverified equitable bill of discovery” and sought to depose one of the respondents and a bank. The names of all the potential defendants were known to petitioner and the allegations of wrongdoing were as well.

Respondents contended the court lacked jurisdiction over them, and this was the only issue on appeal. In its analysis, the court considered whether Illinois Supreme Court Rule 224 or 735 Ill.Comp.Stat. § 2-402 codified the “equitable bill of discovery.” It held that the equitable bill of discovery was, “utilized in a time when courts were without power to compel discovery, [and] has been rendered obsolete by our current system of pleading and practice.” The court, therefore, held that there was not jurisdiction because the technique used was not valid pleading practice.

Respondents may attempt to argue that the court stated that Rule 224 is inapplicable in cases where all defendants are known. The cited language is again classic obiter dicta because the petitioner never even used Rule 224 and, even if he did, his petition was unverified and, therefore, failed even if Rule 224 was used.

Finally, respondents will cite to Gaynor v. Burlington Northern & Santa Fe Ry. as support for its position that once names are known, nothing more is needed. In that case, plaintiff filed a rule 224 continued on page 30
lawsuit against certain individuals and, on the same day, filed a Rule 224 petition. In his petition, he sought a plethora of information but most significant was the names of other potential plaintiffs.39 Nothing in the rule authorizes such an inquiry and, it therefore failed.

V. Practical Application of a Rule 224 Petition

The sum total of all cases in Illinois makes it clear that a petition under Illinois Supreme Court Rule 224 is a well-established and vibrant tool. However, it should not be used in every case. In cases where the evidence against a potential entity or person is unknown or tenuous, a Rule 224 petition is a wonderful tool. It forces a party to not only respond with names but information that will reveal enough to determine if the person or entity may be liable. Rule 224 therefore prevents the “stonewaller” from standing and refusing to cooperate with any information.

When the party has enough information to file a complaint against a defendant and comply with the ethical restrictions, a Rule 224 petition to that person is probably not the right tool40 and once suit is filed, it is most wise to use the tools available under 2-402 for anyone the plaintiff is not certain of as to liability.41

Conclusion

Illinois Supreme Court Rule 224 provides a great tool for lawyers to use in uncertain circumstances. The rule forces recalcitrant and unwilling people, corporations and groups to cooperate and provide information that may lead to liability of themselves and others. In the proper case, it can help the plaintiff obtain the justice he has been denied.

Endnotes

1 As a discovery rule, the court can extend this time limit, particularly in cases of reluctant respondents.
2 See Illinois Supreme Court Rule 219.
3 Some courts interpret the rule in such a way so that the information is produced to the court and then the court conducts a hearing to determine if the previously-unidentified person is “one who may be responsible in damages.” Maxon v. Ottowa Pub. Co., 402 Ill. App.3d 704, 711, 929 N.E.2d 666, 673 (3rd Dist. 2010). This procedure is not within the rule.
4 Id. at 709-710, 929 N.E.2d at 672.
8 Bogseth v. Emanuel, 261 Ill.App.3d 685 (1st Dist. 1995). The appellate court has noted the legislature created Section 402 to balance the need to protect physicians from frivolous lawsuits and the plaintiff’s need to know the surrounding circumstances and involvement of each person. Coyne v. OSF Healthcare Sys., 332 Ill.App.3d 717,
In jurisdictions with separate divisions, it is wise to consider filing a 224 petition in the Chancery Department, not Law Division.


Id. at 246, 664 N.E.2d at 304.

Id. at 246-47, 664 N.E.2d at 305.

Id. at 247, 664 N.E.2d at 305.

Id. at 252, 664 N.E.2d at 308.

Id.


Id. at 686, 895 N.E.2d at 1007.


Id. at 15, 929 N.E.2d at 669.

Id. at 710, 929 N.E.2d at 672.

Id.

Id. at 710, 929 N.E.2d at 673.


Id.

Id. at 528, 561 N.E.2d at 1340.

Id. at 529, 561 N.E.2d at 1341.

Id. at 530, 561 N.E.2d at 1341.

G. Grant Dixon III is a trial lawyer representing injury victims nationwide from his office in LaGrange, Illinois, obtaining many records results along the way. He has published 29 other articles on legal topics, including three others for the Illinois Trial Lawyers Association magazine. Grant is a frequent speaker across the country, having given 142 speeches to date on legal and non-legal topics. Several of those have been for the Illinois Trial Lawyers Association. Grant would like to thank Matthew Perecich for his research and assistance for this article.

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