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13

Return of the Verdict and Entry of Judgment

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I. [13.1] SCOPE OF CHAPTER

This chapter covers the deliberations of the jury through the entry of judgment on the record. Specifically, the problems arising during deliberation, return of the verdict, polling the jury, amendment or correction of the verdict, and entry of the judgment are addressed. Also included is a discussion of the entry of the judgment in the absence of a jury verdict.

Frequently, the attorney feels his or her work is finished when the jury retires for deliberations. At this juncture, the attorney believes that his or her major responsibility is to be available for the return of the verdict. In actuality, it is important that counsel remain immediately accessible during deliberations. In *Allison v. Stalter*, 251 Ill.App.3d 127, 621 N.E.2d 977, 190 Ill.Dec. 524 (4th Dist. 1993), the appellate court held that the absence and unavailability of trial counsel waived his subsequent claim of error during deliberations. This chapter focuses on events occurring during this period that may require counsel to take affirmative action in order to serve the client most effectively.

II. [13.2] PROBLEMS ARISING DURING DELIBERATIONS

The issues concerning the deliberation of the jury may be broken down into four areas: (a) materials allowed in the jury room, (b) improper influences on the deliberating jurors, (c) misconduct on the part of a juror or jurors, and (d) responding to requests of the jury.

A. [13.3] Improper Materials in the Jury Room

Sections 2-1107(b) and 2-1107(d) of the Code of Civil Procedure, 735 ILCS 5/1-101, *et seq.*, allow jurors to take into the jury room the written instructions as well as “[p]apers read or received in evidence, other than depositions” at the discretion of the trial judge. While it is error to permit the jury to take exhibits not admitted into evidence into the jury room (*Griffin v. Subram*, 238 Ill.App.3d 712, 606 N.E.2d 560, 179 Ill.Dec. 728 (1st Dist. 1992)), it may not amount to reversible error unless the unauthorized evidence directly relates to issues in the case and may have improperly influenced the verdict or is otherwise prejudicial to the rights of a party. *Pietrzak v. Rush-Presbyterian-St. Luke’s Medical Center*, 284 Ill.App.3d 244, 670 N.E.2d 1254, 219 Ill.Dec. 366 (1st Dist. 1996). Even if specifically requested by jurors, it is reversible error for the court to give to the jury a prejudicial document which the jury had not seen during the trial. *Lombardo v. Reliance Elevator Co.*, 315 Ill.App.3d 111, 733 N.E.2d 874, 248 Ill.Dec. 199 (1st Dist. 2000).

Certain items, even though admitted into evidence, are not taken into the jury room. Included in this category are impeaching documents (*Esderts v. Chicago, Rock Island & Pacific R.R.*, 76 Ill.App.2d 210, 222 N.E.2d 117 (1st Dist. 1966), *cert. denied*, 87 S.Ct. 1309 (1967)), pleadings (*Hammer v. Slive*, 27 Ill.App.2d 196, 169 N.E.2d 400 (2d Dist. 1960)), and real or tangible evidence with which a jury might be tempted to experiment or conduct independent evaluations (*Modelski v. Navistar International Transportation Corp.*, 302 Ill.App.3d 879, 707 N.E.2d 239, 236 Ill.Dec. 394 (1st Dist. 1999)).

The trial court has broad discretion to decide whether items of evidence or exhibits may be taken into the jury room (*Frank v. Edward Hines Lumber Co.*, 327 Ill.App.3d 113, 761 N.E.2d 1257, 260 Ill.Dec. 701 (1st Dist. 2001)), and its discretion will not be reversed on appeal absent an abuse of that discretion (*Becht v. Palac*, 317 Ill.App.3d 1026, 740 N.E.2d 1131, 251 Ill.Dec. 560 (1st Dist. 2000)). Consequently, it is important to make a clear record, including reasons, when requesting or objecting to evidence or exhibits going into the jury room.

For example, it has been held that it is within the discretion of the court to refuse complicated documents that might confuse the jury (*People ex rel. Department of Transportation v. Smith*, 258 Ill.App.3d 710, 631 N.E.2d 266, 197 Ill.Dec. 263 (1st Dist. 1994)), and to refuse medical records that contain considerable material irrelevant to the issues (*Malanowski v. Jabamoni*, 332 Ill.App.3d 8, 772 N.E.2d 967, 265 Ill.Dec. 596 (1st Dist. 2002)). It is also permissible for the court to require portions of an exhibit redacted to remove irrelevant matter before the exhibit is allowed into the jury room. *Magna Trust Co. v. Illinois Central R.R.*, 313 Ill.App.3d 375, 728 N.E.2d 797, 245 Ill.Dec. 715 (5th Dist. 2000).

The trial court's broad discretion on deciding whether items of evidence or exhibits may be taken into the jury room is not unlimited. It has been held to be an abuse of discretion to refuse to allow one exhibit, when the court has sent all the other exhibits to the jury room, because it "diminished" the value of the refused exhibit. *Gallina v. Watson*, 354 Ill.App.3d 515, 821 N.E.2d 326, 290 Ill.Dec. 275 (4th Dist. 2004).

Even the determination of whether the jury may attempt to undertake an independent investigation with an exhibit, thereby rendering it improper to allow it into the jury room, is a matter within the discretion of the trial court. *Compare Kosinski v. Inland Steel Co.*, 192 Ill.App.3d 1017, 549 N.E.2d 784, 140 Ill.Dec. 133 (1st Dist. 1989) (jar of graphite allowed), *with Zelinski v. Security Lumber Company of Kankakee*, 133 Ill.App.3d 927, 479 N.E.2d 1091, 89 Ill.Dec. 85 (3d Dist. 1985) (refusal of 12-inch ruler proper).

The responsibility of attorneys to ensure that the jury does not receive any improper materials does not stop with the judge's decision as to the materials involved. Mistakes do occur. In *Bieles v. Ables*, 234 Ill.App.3d 269, 599 N.E.2d 469, 174 Ill.Dec. 685 (2d Dist. 1992), a jury member sent a note to the trial judge asking if an attached set of notes (two pages from a yellow legal pad) should be considered as evidence. These trial notes, which contained comments on the credibility of a witness, were mistakenly included with the evidence taken into the jury room. The attorneys should carefully examine the stack of materials given to the jury to determine whether it contains any items that are improper. Error in an incorrectly worded special interrogatory submitted to the jury room was waived by counsel's failure to inspect the form. *Patur v. Aetna Life & Casualty*, 90 Ill.App.3d 464, 413 N.E.2d 65, 45 Ill.Dec. 732 (1st Dist. 1980).

The attorney should also examine the jury room before and after its use each day by the jury to determine if it contains any improper materials. In *People v. Jones*, 105 Ill.2d 342, 475 N.E.2d 832, 86 Ill.Dec. 453 (1985), the presence of racist literature in the jury room resulted in the declaration of a mistrial. The court stated:

Where black racist material is found in the jury room during trial of an accused black man, and the material has admittedly been read by three members of an all-white jury, such circumstances are intolerable, and prejudice to defendant will be presumed. 475 N.E.2d at 836.

B. [13.4] Improper Influences on the Jury

Counsel should be on the lookout for influences that may improperly impact on the actions of the jury. Generally, these can be divided into matters arising internally within the jury and impermissible intrusions on the jury of external matters.

1. [13.5] Internal Problems

Counsel should be on the alert for signs that a juror is feeling ill or that there is fighting or intimidation taking place in the jury room. If symptoms of disorder are properly and timely brought to the trial court's attention, it has a duty to determine if a juror who is acting distressed is being coerced or subjected to duress by other jurors or the deliberation process. *Lowe v. Norfolk & Western Ry.*, 124 Ill.App.3d 80, 463 N.E.2d 792, 79 Ill.Dec. 238 (5th Dist. 1984), *rev'd on other grounds by Kemner v. Monsanto Co.*, 112 Ill.2d 223, 492 N.E.2d 1327, 97 Ill.Dec. 454 (1986).

If the hour is late when the case is being submitted to the jury or deliberations have continued for an excessive length of time, the attorney should seek to have the court determine whether any jurors are fatigued. In the absence of an explicit expression of fatigue, it has not been error to start deliberations at a late hour (*Nunley v. Mares*, 114 Ill.App.3d 779, 449 N.E.2d 864, 70 Ill.Dec. 517 (3d Dist. 1983)), or to allow marathon deliberations (*People v. Gargano*, 10 Ill.App.3d 957, 295 N.E.2d 342 (2d Dist. 1973)).

2. [13.6] External Influences

The jury should not be influenced by external matters that arise while they are deliberating. Every effort should be made to isolate them from outside influences. Possible outside influences on the jury include family members or loved ones of jurors who are ill, demonstrations either outside the courtroom or in view of the jury room windows, or disturbing national events such as assassinations, air crashes, or the outbreak of war. If items are appearing in the news media regarding the case or issues raised by the case, care should be taken to prevent any of the jurors from being exposed to the news items. *People v. Rogers*, 135 Ill.App.3d 608, 482 N.E.2d 639, 90 Ill.Dec. 660 (2d Dist. 1985).

Extrajudicial contact between parties, witnesses, or counsel and the jurors is to be avoided. When contact is of a significant nature, it may require the declaration of a mistrial. In *Campbell v. Fox*, 113 Ill.2d 354, 498 N.E.2d 1145, 101 Ill.Dec. 637 (1986), a defendant doctor administered emergency CPR to a juror. Although there was no communication regarding the case, the doctor's actions were not intended to influence the jury, and the other jurors indicated they would be able to reach a fair and impartial decision, the Illinois Supreme Court held that a mistrial should have been declared due to the significant nature of the contact.

All communications between the jury and sources outside the jury room, whether by the court, the bailiff, or others, should be carefully monitored. Routine communications regarding the comfort and feeding of the jurors are permissible. *Emme v. Pennsylvania R.R.*, 29 Ill.App.2d 97, 172 N.E.2d 507 (1st Dist. 1961). However, as noted in *Clingan v. Rakalla*, 252 Ill.App.3d 786, 624 N.E.2d 1, 5, 191 Ill.Dec. 505 (4th Dist. 1993): “Bailiffs should serve merely as conduits for any exchange of communication between the court and a deliberating jury — they do not possess authority to impart information or give directions on their own.” [Emphasis in original.]

It is important that the exact nature of any communication with the jury be made part of the court record. While communication with the jury by an unauthorized person during deliberation is presumptively prejudicial (*Kelly v. HCI Heinz Construction Co.*, 282 Ill.App.3d 36, 668 N.E.2d 596, 218 Ill.Dec. 112 (4th Dist. 1996)), an unauthorized communication is not grounds for setting aside the verdict if no apparent injury or prejudice resulted. See *Waller v. Bagga*, 219 Ill.App.3d 542, 579 N.E.2d 1073, 162 Ill.Dec. 259 (1st Dist. 1991), in which the bailiff’s comments relating to the plaintiff’s coaching abilities and marital status, while clearly improper, were not relevant to any critical issue and thus not cause for a new trial. While it is not automatically reversible error for the trial judge to have ex parte communication with the jury during deliberations (*Carey v. J.R. Lazzara, Inc.*, 277 Ill.App.3d 902, 661 N.E.2d 413, 214 Ill.Dec. 559 (1st Dist. 1996)), it was held to be an abuse of discretion for the trial judge to question the foreperson outside the presence of defense counsel. *Slavin v. Saltzman*, 268 Ill.App.3d 392, 643 N.E.2d 1383, 205 Ill.Dec. 776 (2d Dist. 1994), *rev’d on other grounds by Zuder v. Gibson*, 288 Ill.App.3d 329, 680 N.E.2d 483, 223 Ill.Dec. 750 (2d Dist. 1997).

It is impermissible for the court or its officers to coerce the jury to render a verdict. There is a fine line between the permissible *Prim* instruction (Illinois Pattern Jury Instructions — Civil No. 1.05 (2000)) given to a deadlocked jury and coercion. The *Prim* instruction, based on *People v. Prim*, 53 Ill.2d 62, 289 N.E.2d 601 (1972), was specifically designed to help the jury through a deadlocked situation without coercing it or prejudicing a party. The notes for I.P.I. — Civil No. 1.05 recommend that the instruction be given after conferring with the attorneys and that counsel and the court reporter should be present when the instruction is given to the jury. The instruction can be given either orally or in writing, and it is not reversible error to give it without a court reporter being present. *Palanti v. Dillon Enterprises, Ltd.*, 303 Ill.App.3d 58, 707 N.E.2d 695, 236 Ill.Dec. 568 (1st Dist. 1999).

The court is not restricted to the exact language of the pattern instruction if the statement is substantially the same and not coercive. *Trauscht v. Gunkel*, 58 Ill.App.3d 509, 374 N.E.2d 843, 16 Ill.Dec. 68 (1st Dist. 1978). However, the preferred practice is to use just the pattern instruction as noted in *Preston v. Simmons*, 321 Ill.App.3d 789, 747 N.E.2d 1059, 254 Ill.Dec. 647 (1st Dist. 2001), in which giving the *Prim* instruction along with additional comments was held to be improperly coercive.

It is not error to give the *Prim* instruction to a jury that is in fact not deadlocked. *West v. Boehne*, 229 Ill.App.3d 1045, 594 N.E.2d 1383, 171 Ill.Dec. 863 (2d Dist. 1992). A judge may inquire about the progress of the deliberations before declaring a hung jury. Even if the jury has already inquired of the court about being a hung jury, the court may give the deadlock instruction and send the jury back for further deliberation. *Wiker v. Pieprzyca-Berkes*, 314 Ill.App.3d 421, 732 N.E.2d 92, 247 Ill.Dec. 376 (1st Dist. 2000).

Lengthy remarks made by a trial judge emphasizing the time and expense of the trials and the rarity of a mistrial before reading the I.P.I. deadlock instruction improperly confused the jurors, interfered with their deliberations, and may have exerted undue pressure on them to yield their individual convictions for the sake of reaching a verdict. *Preston v. Simmons*, 321 Ill.App.3d 789, 747 N.E.2d 1059, 254 Ill.Dec. 647 (1st Dist. 2001).

Determination of what length of time is reasonable to permit the jury to deliberate is a matter within the discretion of the trial court. *People v. Harris*, 294 Ill.App.3d 561, 691 N.E.2d 80, 229 Ill.Dec. 144 (1st Dist. 1998). The reasonableness of the deliberation period depends on factors such as the length of the trial, the nature or complexity of the case, the volume and nature of the evidence, and the presence of multiple counts or multiple defendants. *Huwe v. Commonwealth Edison Co.*, 29 Ill.App.3d 1085, 332 N.E.2d 60 (2d Dist. 1975); *Cleveringa v. J.I. Case Co.*, 230 Ill.App.3d 831, 595 N.E.2d 1193, 172 Ill.Dec. 523 (1st Dist. 1992).

The judge is not the only potential source of coercion on the jury. In *Williams v. Yellow Cab Co.*, 11 Ill.App.2d 112, 136 N.E.2d 582 (1st Dist. 1956), the jury was scheduled to separate at 10:30 p.m. Reversible error was caused when, at about 10:00 p.m., a bailiff humorously referred to sleeping cots for the jury and a verdict was reached shortly after the comment was made. Similarly, a new trial was necessary when the jury reached a verdict shortly after being told by a bailiff that the judge had left the building, that it would take an hour and a half to get the judge and lawyer back, and that they should attempt to solve their problem. *Clingan, supra*.

C. [13.7] Jury Misconduct

Counsel should be alert to jury misconduct such as independent research, unsupervised site visits, independent experiments, “quotient” verdicts, or drug or alcohol impairment. The misconduct should then be brought to the court’s attention, and the court should conduct a full evidentiary hearing as to its effect on the jury’s deliberations. Not every instance of extraneous or unauthorized information reaching the jury is so prejudicial as to impact the verdict. *Danhof v. Richland Township*, 202 Ill.App.3d 27, 559 N.E.2d 1155, 147 Ill.Dec. 815 (3d Dist. 1990).

Unsupervised site visits are presumptively prejudicial. *Wade v. City of Chicago Heights*, 295 Ill.App.3d 873, 693 N.E.2d 426, 230 Ill.Dec. 297 (1st Dist. 1998). However, a site visit is not always reversible error. *Birch v. Township of Drummer*, 139 Ill.App.3d 397, 487 N.E.2d 798, 94 Ill.Dec. 41 (4th Dist. 1985). Similarly, it is always improper but not always reversible error when a juror consults an independent source or brings improper evidence into the jury room. *Compare Haight v. Aldridge Electric Co.*, 215 Ill.App.3d 353, 575 N.E.2d 243, 159 Ill.Dec. 14 (2d Dist. 1991) (new trial required when juror consulted almanac for time of sunset on date of automobile accident when visibility was crucial issue), *with Templeton v. Chicago & Northwestern Transportation Co.*, 257 Ill.App.3d 42, 628 N.E.2d 442, 194 Ill.Dec. 945 (1st Dist. 1993) (new trial not required when juror displayed but did not read from finance textbook during discussion by jurors of effect of inflation and interest rates on amount to be awarded), *Gertz v. Bass*, 59 Ill.App.2d 180, 208 N.E.2d 113 (1st Dist. 1965) (error for judge to provide jury with dictionary), *and Macias v. Cincinnati Forte*, 277 Ill.App.3d 947, 661 N.E.2d 472, 214 Ill.Dec. 618 (1st Dist. 1996) (foreperson having independently consulted BLACK’S LAW DICTIONARY not reversible error).

Establishing that unauthorized material reached the jury is only the first step. The losing party must then prove that the unauthorized information related directly to an issue in the case and may have improperly influenced the verdict. The burden then shifts to the other party to demonstrate that the information did not result in prejudice. *Van Hattem v. Kmart Corp.*, 308 Ill.App.3d 121, 719 N.E.2d 212, 241 Ill.Dec. 351 (1st Dist. 1999).

Before beginning deliberations, the judge may replace jurors who are impaired by alcohol or drugs. However, once deliberations begin, an impaired juror or jurors can result in a mistrial. A mere showing of drug or alcohol use by a juror is insufficient. It must be shown that the juror or the deliberations were impaired or influenced as a result of the drug or alcohol use. *Landstrom v. Williamson*, 164 Ill.App.3d 1087, 518 N.E.2d 711, 116 Ill.Dec. 89 (4th Dist. 1987), *appeal denied*, 119 Ill.2d 558 (1988).

It is also misconduct for jurors to conduct independent experiments or investigations; however, the unauthorized information must directly relate to an issue in the case so that it could have improperly influenced the jury before it can amount to reversible error. *Snelson v. Kamm*, 319 Ill.App.3d 116, 745 N.E.2d 128, 253 Ill.Dec. 354 (4th Dist. 2001), *aff'd in part, rev'd in part, remanded*, 204 Ill.2d 1 (2003). However, counsel must establish the improper conduct by credible and competent evidence (*Johnson v. Danville Cash & Carry Lumber Co.*, 200 Ill.App.3d 196, 558 N.E.2d 626, 146 Ill.Dec. 663 (4th Dist. 1990)), particularly as the jurors are permitted to rely on their own observations and life experiences. *Dovin v. Winfield Township*, 164 Ill.App.3d 326, 517 N.E.2d 1119, 115 Ill.Dec. 433 (2d Dist. 1987), *overruled on other grounds by Gerill Corp. v. Jack L. Hargrove Builders, Inc.*, 128 Ill.2d 179, 538 N.E.2d 530, 131 Ill.Dec. 155 (1989).

In *Stallings v. Black & Decker (U.S.), Inc.*, 342 Ill.App.3d 676, 796 N.E.2d 143, 277 Ill.Dec. 428 (5th Dist. 2003), a juror's admitted extrajudicial inquiry was presumptively prejudicial, and when the prevailing party failed to demonstrate that no prejudice resulted, required reversal. The presumption of prejudice arose when the jury was exposed to improperly acquired information relating to a crucial issue.

It is also misconduct for a jury to reach a compromise verdict. A compromise verdict reflects a failure to separate the issues of liability and damages (*e.g.*, when the jury's award may have been motivated by sympathy). A verdict in which the award of damages does not bear a reasonable relationship to the evidence may be the result of a compromise. *Winters v. Kline*, 344 Ill.App.3d 919, 801 N.E.2d 984, 280 Ill.Dec. 39 (1st Dist. 2003).

Counsel also needs to be on the lookout for factors that would show that the jury reached a "quotient" verdict arrived at by averaging the damages that each individual juror set. Such a verdict is void. *Statler v. Catalano*, 167 Ill.App.3d 397, 521 N.E.2d 565, 118 Ill.Dec. 283 (5th Dist.), *appeal denied*, 122 Ill.2d 595 (1988). However, there must be a showing that there was an advance agreement to be bound by the average figure, as the jury may experiment by considering average figures. *Urbas v. Saintco, Inc.*, 264 Ill.App.3d 111, 636 N.E.2d 1214, 201 Ill.Dec. 782 (5th Dist. 1994). Although quotient verdicts are impermissible, they are not subject to attack through juror affidavits. Affidavits related to motive, or the method or process by which a jury reached a verdict, cannot be used to support a claim that the jury reached its verdict through an impermissible quotient process. *Carroll v. Preston Trucking Co.*, 349 Ill.App.3d 562, 812 N.E.2d 431, 285 Ill.Dec. 611 (1st Dist. 2004).

Pursuant to 735 ILCS 5/2-1107(b), the original jury instructions “shall be returned by the jury with its verdict into court.” It behooves counsel to examine the returned documents carefully. They may contain evidence or notations indicating that a “quotient” verdict was agreed on or that other misconduct such as experiments occurred during the jury’s deliberations.

D. [13.8] Questions or Requests by the Jury

Counsel should monitor requests by members of the jury to the trial judge. While the law permits certain communications between the judge and the jury, generally any communication between the court and the jury should be in the presence of counsel. *Chicago & Alton R.R. v. Robbins*, 159 Ill. 598, 43 N.E. 332 (1895). The preferred method is to allow counsel access to the exact wording of the jury’s question even if that wording would reveal the current disposition of the jury. *Wodziak v. Kash*, 278 Ill.App.3d 901, 663 N.E.2d 138, 215 Ill.Dec. 388 (1st Dist. 1996).

In civil cases, counsel can waive the need for his or her presence either by stipulation or by conduct. In *Allison v. Stalter*, 251 Ill.App.3d 127, 621 N.E.2d 977, 980, 190 Ill.Dec. 524 (4th Dist. 1993), the appellate court held that “the absence and unavailability of trial counsel during jury deliberation waives review of any assignment of error arising by virtue of a judicial response to a jury inquiry or request, absent judicial conduct amounting to an affront to the judicial process.” In *Wodziak, supra*, the attorney waived the right to know the exact wording of the inquiry by failing to object to the procedure used by the trial judge at the time the questions were received.

When a jury has indicated it does not understand a point of law, the general rule is that the court has a duty to instruct the jury further or clarify the point of law that has caused the confusion. *Hojek v. Harkness*, 314 Ill.App.3d 831, 733 N.E.2d 356, 247 Ill.Dec. 892 (1st Dist. 2000). More may be required than simply rereading the instruction. *Koehler v. Neighbors*, 322 Ill.App.3d 440, 751 N.E.2d 149, 256 Ill.Dec. 96 (5th Dist. 2001). The failure to respond to a jury’s questions on a matter of law or giving a response that provides no answer (such as being told to reference the instructions already received) has been held to be prejudicial error. *People v. Childs*, 159 Ill.2d 217, 636 N.E.2d 534, 201 Ill.Dec. 102 (1994).

However, the court may exercise its discretion and decline to answer a jury’s question on a point of law that is clearly covered in the original instructions in a readily understandable manner. *Van Winkle v. Owens-Corning Fiberglas Corp.*, 291 Ill.App.3d 165, 683 N.E.2d 985, 225 Ill.Dec. 482 (4th Dist. 1997). Or it may be sufficient to call the jury out and have the applicable instruction reread to them by the court. *Schiff v. Friberg*, 331 Ill.App.3d 643, 771 N.E.2d 517, 264 Ill.Dec. 813 (1st Dist. 2002). Further, when answering the question would unduly single out or emphasize a particular instruction already given, the court has the discretion to decline to answer. *Unzicker v. Kraft Food Ingredients Corp.*, 325 Ill.App.3d 587, 758 N.E.2d 474, 259 Ill.Dec. 351 (4th Dist. 2001). Finally, if the jury’s question also involves a question of fact, the court may decline to answer. *Id.*

It is also important to note that in the Fourth District, trial counsel may be required to provide the court with a written draft of the specific response that counsel wants the court to provide to the jury or the issue may be considered waived on appeal. *VanWinkle, supra*.

Although the trial court need not define words of common usage and understanding (*De Rosa v. Albert F. Amling Co.*, 84 Ill.App.3d 64, 404 N.E.2d 564, 39 Ill.Dec. 180 (1st Dist. 1980)), it is not an abuse of discretion to provide an ordinary, neutral, non-argumentative definition in response to a direct request for a definition (*Hany v. General Electric Co.*, 221 Ill.App.3d 390, 581 N.E.2d 1213, 163 Ill.Dec. 790 (4th Dist. 1991)). However, when the jury seeks a definition of a word that has a judicial or legal interpretation, the trial court should inform the jury of the judicial or legal interpretation. *Kingston v. Turner*, 133 Ill.App.3d 677, 479 N.E.2d 410, 88 Ill.Dec. 797 (5th Dist. 1985), *rev'd on other grounds*, 115 Ill.2d 445 (1987).

When a jury makes a request for a transcript, for part of a transcript, or to rehear testimony, the judge must make a preliminary determination as to what testimony the jury desires to hear before deciding what the response to the request should be. *People v. Jackson*, 26 Ill.App.3d 618, 325 N.E.2d 450 (1st Dist. 1975). It is generally not error for the trial court to refuse to read back testimony, but there is also support for giving an affirmative response to a jury's request to review testimonial evidence, particularly when the request is relatively simple and reasonably limited in scope. *Smith v. Baker's Feed & Grain, Inc.*, 213 Ill.App.3d 950, 572 N.E.2d 430, 157 Ill.Dec. 361 (3d Dist. 1991).

Judges should not enter the jury room to determine what the jury's problems are, if any. *Mathes v. Basso*, 104 Ill.App.2d 237, 244 N.E.2d 362 (1st Dist. 1968). The preferred practice is for the jury to make their questions or requests in open court or in a writing that is opened in the presence of all parties or their representatives. *City National Bank of Murphysboro v. Reiman*, 236 Ill.App.3d 1080, 601 N.E.2d 316, 175 Ill.Dec. 919 (5th Dist. 1992). Even in the absence of counsel, if the judge's response was neutral and no prejudice to a party is shown, communication between the judge and jury will not be reversible error. *Moushon v. AAA Amusement, Inc.*, 267 Ill.App.3d 187, 641 N.E.2d 1201, 204 Ill.Dec. 582 (4th Dist. 1994).

III. RETURN OF THE VERDICT

A. [13.9] In General

A verdict is the final decision of the jury concerning the matters of fact submitted to it for determination. Verdicts can be broken down into four types:

1. general verdicts;
2. general verdicts with special findings of fact;
3. special verdicts; and
4. sealed verdicts.

735 ILCS 5/2-1108 provides that “[u]nless the nature of the case requires otherwise, the jury shall render a general verdict.” The statute further provides for submission to the jury of special interrogatories if requested. If the request is on an ultimate fact, the statutory provision is

mandatory and the court has no discretion to refuse the request. *Dovin v. Winfield Township*, 164 Ill.App.3d 326, 517 N.E.2d 1119, 115 Ill.Dec. 433 (2d Dist. 1987), *overruled on other grounds by Gerill Corp. v. Jack L. Hargrove Builders, Inc.*, 128 Ill.2d 179, 538 N.E.2d 530, 131 Ill.Dec. 155 (1989). When answered, the special interrogatories become special findings of fact.

Upon concluding its deliberations, the jury shall have completed a general verdict form and have answered any special interrogatories. Normally the verdict is in writing, but under Code of Civil Procedure §2-1201(a) it is sufficient for a general verdict without special interrogatories to be pronounced orally in open court by the foreperson. *Gille v. Winnebago County Housing Authority*, 104 Ill.App.2d 470, 244 N.E.2d 636 (2d Dist. 1969), *aff'd*, 44 Ill.2d 419 (1970).

B. [13.10] Checking the Verdict

Whether the verdict is written or oral, a general verdict or one including special interrogatories, several matters must be checked.

1. [13.11] Special Interrogatories

The purpose of a special interrogatory is to test the general verdict against the jury's determination on ultimate issues of fact. *Snyder v. Curran Township, Illinois*, 281 Ill.App.3d 56, 666 N.E.2d 818, 217 Ill.Dec. 149 (4th Dist. 1996). The special interrogatories should be evaluated to ensure that they are all answered unequivocally. If there are omissions, the proper course is to send the jury back and have them make a definite answer to each. *Butler v. Castillo*, 20 Ill.App.3d 329, 314 N.E.2d 328 (1st Dist. 1974). The best practice is to make sure that the special interrogatories are signed by the jury, but when the answers are consistent with the general verdict, it has been held not to be reversible error for the court to accept unsigned special interrogatories. *City National Bank of Murphysboro v. Reiman*, 236 Ill.App.3d 1080, 601 N.E.2d 316, 175 Ill.Dec. 919 (5th Dist. 1992). The court should enter judgment on the special verdict even in the absence of a general verdict when the special interrogatory answer was dispositive. *Sangster v. Van Hecke*, 67 Ill.2d 96, 364 N.E.2d 79, 7 Ill.Dec. 92 (1977).

2. [13.12] Multiple Parties and Multiple Counts

When there are multiple parties or multiple counts, the verdict or verdicts need to be evaluated to ensure that a verdict has been rendered as to each party and each count. If relief has been asked for against multiple defendants, a general verdict for the plaintiff is construed as a verdict against all the defendants. *Sparberg v. Cohen*, 313 Ill.App. 143, 38 N.E.2d 993 (1st Dist. 1942) (abst.). The exception to this construction occurs when the plaintiff has asserted alternative but mutually exclusive theories of liability against the defendants. *Joe & Dan International Corp. v. United States Fidelity & Guaranty Co.*, 178 Ill.App.3d 741, 533 N.E.2d 912, 127 Ill.Dec. 830 (1st Dist. 1988).

Also, when several causes of action are charged and a general verdict is returned, one good cause of action is sufficient to sustain the verdict. *Hany v. General Electric Co.*, 221 Ill.App.3d 390, 581 N.E.2d 1213, 163 Ill.Dec. 790 (4th Dist. 1991); *Peterson v. Henning*, 116 Ill.App.3d 305, 452 N.E.2d 135, 72 Ill.Dec. 203 (4th Dist. 1983). However, when there are separate verdicts

submitted for multiple defendants, failure to return a verdict regarding a particular defendant or defendants is a finding in favor of that defendant or defendants. *Ross v. Aryan International, Inc.*, 219 Ill.App.3d 634, 580 N.E.2d 937, 162 Ill.Dec. 754 (1st Dist. 1991). This rule, that a blank finding is tantamount to a finding of not guilty, applies to verdicts involving multiple defendants and not to jury verdicts dealing with multiple counts. *J.F. Equipment, Inc. v. Owatonna Manufacturing Co.*, 143 Ill.App.3d 208, 494 N.E.2d 516, 98 Ill.Dec. 394 (2d Dist. 1986); *Martin v. McIntosh*, 37 Ill.App.3d 526, 346 N.E.2d 450 (5th Dist. 1976).

3. [13.13] Itemized Verdicts

Code of Civil Procedure §2-1109 provides that “[i]n every case where damages for bodily injury or death are assessed by the jury the verdict shall be itemized so as to reflect the monetary distribution, if any, among economic loss and non-economic loss.” 735 ILCS 5/2-1109. Code of Civil Procedure §2-1109 goes on to provide that in medical malpractice cases, the verdicts should be further itemized “so as to reflect the distribution of economic loss by category.” *Id.* Finally, Code of Civil Procedure §2-1109 provides that compensation for each category of economic loss shall be divided into amounts for losses already incurred and future losses. See also Code of Civil Procedure §2-1706, discussing special findings required in medical malpractice actions.

As a consequence of itemization requirements, juries must make substantial mathematical calculations and fill out figures on specific lines for the separate items of damage. Trial counsel must make sure the calculations are in fact completed. In *Marchese v. Vincelette*, 261 Ill.App.3d 520, 633 N.E.2d 877, 199 Ill.Dec. 81 (1st Dist. 1994), the returning of only a general verdict form when an itemized form was required by the statute rendered the amount of the award unreviewable. Even if it appears entirely plausible that the jury inadvertently entered figures on the wrong line, when the amounts comport with the evidence adduced at trial, the verdict will be upheld. *Branum v. Slezak Construction Co.*, 289 Ill.App.3d 948, 682 N.E.2d 1165, 225 Ill.Dec. 88 (1st Dist. 1997).

In cases in which the jury is using percentages to calculate damages in relation to contribution or comparative negligence and in cases of itemized verdicts, the lawyer should verify the mathematical calculations prior to entry of the judgment on the verdict and discharge of the jury. If errors are then found, the matter can be resubmitted to the jury for correction or clarification. *Burnett v. Caho*, 7 Ill.App.3d 266, 285 N.E.2d 619 (3d Dist. 1972); *Winters v. Richerson*, 9 Ill.App.2d 359, 132 N.E.2d 673 (4th Dist. 1956).

4. [13.14] Special Interrogatories Inconsistent with the General Verdict

When the jury has returned a general verdict with special findings of fact (answers to special interrogatories), trial counsel must review the verdict in light of the special findings to determine whether they are consistent. When an answer to a special interrogatory is consistent with the general verdict, the answer is meaningless and judgment is entered on the general verdict. *Kosrow v. Acker*, 208 Ill.App.3d 143, 566 N.E.2d 1370, 153 Ill.Dec. 264 (2d Dist. 1991).

However, 735 ILCS 5/2-1108 provides that “[w]hen the special finding of fact is inconsistent with the general verdict, the former controls the latter and the court may enter judgment accordingly.” See also *Simmons v. Garces*, 198 Ill.2d 541, 763 N.E.2d 720, 261 Ill.Dec. 471 (2002).

Trial counsel is cautioned to make a careful evaluation of the possible inconsistencies since all reasonable presumptions will be entertained in favor of a general verdict. *Kessling v. United States Cheerleaders Ass’n*, 274 Ill.App.3d 776, 655 N.E.2d 926, 211 Ill.Dec. 543 (3d Dist. 1995). The special finding must be clearly and absolutely irreconcilable with the general verdict. *Powell v. State Farm Fire & Casualty Co.*, 243 Ill.App.3d 577, 612 N.E.2d 85, 183 Ill.Dec. 828 (1st Dist. 1993). The verdicts are not legally inconsistent unless they are absolutely irreconcilable and they are not irreconcilable if any reasonable hypothesis supports the verdicts. *Barrick v. Grimes*, 308 Ill.App.3d 306, 720 N.E.2d 280, 241 Ill.Dec. 825 (4th Dist. 1999). When a special interrogatory does not cover all of the issues or a reasonable hypothesis exists to construe the general verdict consistent with the special interrogatory, the general verdict will prevail. *DiMarco v. City of Chicago*, 278 Ill.App.3d 318, 662 N.E.2d 525, 214 Ill.Dec. 959 (1st Dist. 1996).

The lengths to which the courts will go to construe verdicts as not inconsistent is demonstrated in *Check v. Clifford Chrysler-Plymouth of Buffalo Grove, Inc.*, 342 Ill.App.3d 150, 794 N.E.2d 829, 276 Ill.Dec. 579 (1st Dist. 2003).

If the answer to a special interrogatory is not conclusive of the issue, then the interrogatory answer will not be construed as inconsistent with the jury’s general verdict. *Blue v. Environmental Engineering, Inc.*, 215 Ill.2d 78, 828 N.E.2d 1128, 293 Ill.Dec. 630 (2005).

C. [13.15] Special Verdicts

Although the current wording of 735 ILCS 5/2-1108 leaves open the question of allowing special verdicts, which are to be distinguished from special interrogatories, their use has apparently been abandoned, and many authorities consider special verdicts to be abolished. In *Coleman v. Hermann*, 116 Ill.App.3d 448, 452 N.E.2d 620, 72 Ill.Dec. 367 (2d Dist. 1983), the court concluded that since the statute provided for the discretionary use of special verdict forms in complex, legally subtle cases or cases of multiple parties and since the special interrogatories were broad enough to constitute a special verdict, judgment based on the special interrogatories would be upheld.

D. [13.16] Sealed Verdicts

Historically a sealed verdict was used to make things more convenient for a jury. For a detailed discussion see *St. Louis, Vandalia & Terre Haute R.R. v. Faitz*, 19 Ill.App. 85 (4th Dist. 1886). A sealed verdict is signed by the jury after it has answered special interrogatories, if any, and is then delivered to the bailiff. The jury is then allowed to separate and depart. The jury members are required to return to court at a time set for opening the sealed verdict. At that time, the verdict is opened and announced in open court. The jurors are then available for polling and the entry of the judgment on the verdict.

The court may allow the jury to return a sealed verdict in civil cases with or without the consent of the parties. *Grace & Hyde Co. v. Sanborn*, 124 Ill.App. 472 (1st Dist.), *aff'd*, 225 Ill. 138 (1906). In practice, the court generally allows the return of a sealed verdict pursuant to a stipulation of the parties. Further, the parties can, by stipulation, waive the appearance of the jurors at the opening of the verdict. *Gille v. Winnebago County Housing Authority*, 104 Ill.App.2d 470, 244 N.E.2d 636 (2d Dist. 1969), *aff'd*, 44 Ill.2d 419 (1970). However, by allowing the jury to be discharged, the parties may forfeit the opportunity to have the jury correct any problem with the sealed verdicts.

IV. [13.17] POLLING THE JURY

After the jury has returned its verdict, any party has a right to have the jury polled. *Catholic Order of Foresters v. Fitz*, 181 Ill. 206, 54 N.E. 952 (1899); *Bianchi v. Mikhail*, 266 Ill.App.3d 767, 640 N.E.2d 1370, 204 Ill.Dec. 21 (1st Dist. 1994). Polling the jury means that a designated person, usually the trial judge or the court clerk, asks each juror individually to affirm the verdict. The specific form of the question to be asked in the polling process is largely within the discretion of the trial court so long as a juror is given the opportunity to dissent. *Bianchi, supra*, 266 Ill.App.3d at 779. The following form is often used in Illinois: “Was this then and is this now your verdict?” *Id.*

A. [13.18] Requesting the Poll

Although the poll is an absolute right, it is not done automatically. A party must specifically request it, and the request must be timely. A request is timely if it is made after the verdict has been announced and before the jury has been discharged. *Springfield Consolidated Ry. v. Welsch*, 155 Ill. 511, 40 N.E. 1034 (1895). A failure to timely request the polling of the jury waives the right. *Sheahan v. Dexter*, 136 Ill.App.3d 241, 483 N.E.2d 402, 91 Ill.Dec. 120 (3d Dist. 1985). The court’s failure to poll the jury after a timely request is reversible error. *People v. DeStefano*, 64 Ill.App.2d 389, 212 N.E.2d 357 (1st Dist. 1965).

The timing of the request for polling is particularly important when the jury is being allowed to return a sealed verdict. The general rule is that a sealed verdict does not dispense with the personal attendance of the jurors when the verdict is read. However, often the instructions on the sealed verdict include arrangements for the discharge and dismissal of the jurors. Under those circumstances, the failure to object due to lack of opportunity for polling the jury waives the right to poll. *Wilcox v. International Harvester Company of America*, 198 Ill.App. 33 (1st Dist. 1916), *aff'd*, 278 Ill. 465 (1917), *rev'd on other grounds by* *Murphy v. Martin Oil Co.*, 56 Ill.2d 423, 308 N.E.2d 583 (1974).

B. [13.19] The Purpose of Polling

The purpose of polling is to determine whether the verdict accurately reflects each juror’s vote and that votes were not the result of force or coercion. *People v. McDonald*, 168 Ill.2d 420, 660 N.E.2d 832, 214 Ill.Dec. 125 (1995). The phrasing of the polling question should require the juror to either affirm or deny the verdict. It has been held to be error to conduct the poll by

instructing each juror to answer: “This was and this is now my verdict.” *Goshey v. Dunlap*, 16 Ill.App.3d 29, 305 N.E.2d 648, 652 (1st Dist. 1973). The rules governing the polling process are the same in both criminal and civil trials. *Bianchi v. Mikhail*, 266 Ill.App.3d 767, 640 N.E.2d 1370, 204 Ill.Dec. 21 (1st Dist. 1994).

C. [13.20] Disavowing the Verdict

If any juror expresses a possible dissent, the trial court should be requested to follow up and make a full examination of the juror. Care should be taken not to hinder a juror’s expression of dissent. *People ex rel. Paul v. Harvey*, 9 Ill.App.3d 209, 292 N.E.2d 124 (1st Dist. 1972). However, the trial judge must be careful not to make polling another arena for deliberation. *Ferry v. Checker Taxi Co.*, 165 Ill.App.3d 744, 520 N.E.2d 733, 117 Ill.Dec. 382 (1st Dist. 1987), *appeal denied*, 119 Ill.2d 556 (1988).

It is important that a clear record be made of the jurors’ responses to the polling. If some hesitation or reluctance seems indicated, a party must have the trial judge make the necessary follow-up inquiries; otherwise, the issue is waived. On appeal, a juror’s hesitation in responding, or a juror’s need to have the question repeated, is not sufficient to show disavowment of the verdict. Rather, the trial court’s determination of the nature of a juror’s response will not be disturbed on appeal unless it was clearly unreasonable. *People v. Preston*, 60 Ill.App.3d 162, 376 N.E.2d 299, 17 Ill.Dec. 300 (1st Dist. 1978).

A disavowment renders the verdict invalid. When the trial court determines that a juror disavowed the verdict, the court must follow through and complete the polling of any remaining jurors. The proper remedy is for the trial court to instruct the jury to retire for further deliberations or to discharge it. *Bianchi v. Mikhail*, 266 Ill.App.3d 767, 640 N.E.2d 1370, 204 Ill.Dec. 21 (1st Dist. 1994).

V. [13.21] AMENDMENT OR CORRECTION OF THE VERDICT

It is possible for the jury itself to amend or correct its verdict. When the jury has already been discharged, the court can make certain limited corrections in the verdict.

A. [13.22] Amendment Before Discharge of the Jury

The finding of the jury does not become a verdict until it is accepted by the court and entered of record. *Wilburn v. City of Chicago*, 123 Ill.App.3d 744, 463 N.E.2d 789, 79 Ill.Dec. 235 (1st Dist. 1984). Therefore, the jury may, prior to acceptance and entry, change the verdict. *Roth v. Meeker*, 72 Ill.App.3d 66, 389 N.E.2d 1248, 27 Ill.Dec. 840 (3d Dist. 1979). This holds true even if the jury returned a sealed verdict and the change is sought when the jury is later reassembled for its entry. *Lenartz v. Funk*, 224 Ill.App. 180 (1st Dist. 1922).

This type of change in the verdict before its acceptance and entry can be done as a result of the trial court’s noting that the verdict is incomplete or insufficient. The court can then request the

jury to retire to complete or correct the verdict. *Burnett v. Caho*, 7 Ill.App.3d 266, 285 N.E.2d 619 (3d Dist. 1972); *Smith v. Williams*, 22 Ill. 357 (1859). However, it has been held improper for the trial judge to question the foreperson outside the presence of counsel and then use the information to complete blanks left on the verdict form. *Slavin v. Saltzman*, 268 Ill.App.3d 392, 643 N.E.2d 1383, 205 Ill.Dec. 776 (2d Dist. 1994). However, it has been held proper to poll the jury with a specific question to resolve an inconsistency between the general verdict and a special interrogatory. *Mrowca v. Chicago Transit Authority*, 317 Ill.App.3d 784, 740 N.E.2d 372, 251 Ill.Dec. 291 (1st Dist. 2000).

The jury changing its verdict may occur when the court has the jury retire to resume deliberation after receiving a dissent from the original verdict during polling. *Roth, supra*. A change can also be the result of the jury's seeing an error in computation or otherwise wishing to reconsider. *Martin v. Morelock*, 32 Ill. 485 (1863).

However, if a blank verdict form is returned that may operate as a not guilty for one or more multiple defendants, the finding must be accepted. Then judgment must be entered on the record for the verdict to be effective. *Wilburn, supra*.

B. [13.23] Amendment After Discharge of the Jury

After the verdict has been accepted and the jury has been discharged, it may still be possible to amend or correct the verdict. However, the nature of the amendment or correction is greatly restricted. Thus, counsel will want to carefully evaluate the verdict forms and special findings before the jury is discharged. Then any deficiencies can be brought to the court's attention while the jury is still available. The trial court may amend the verdict only when the defect is one of form and not one of substance. *Crowell v. Parrish*, 159 Ill.App.3d 604, 512 N.E.2d 382, 111 Ill.Dec. 266 (5th Dist. 1987).

An amendment becomes substantial when it changes the verdict in such a way as to no longer reflect the outcome as the jury determined it. *Argueta v. Baltimore & Ohio Chicago Terminal R.R.*, 224 Ill.App.3d 11, 586 N.E.2d 386, 166 Ill.Dec. 428 (1st Dist. 1991). For example, it was proper for the court to reject a notation by the jury on the verdict form as to how the damages were to be assessed against particular defendants as surplusage. *Marek v. Stepkowski*, 241 Ill.App.3d 862, 608 N.E.2d 285, 181 Ill.Dec. 212 (1st Dist. 1992).

C. [13.24] Amendment To Conform to the Jury's Intent

The jury's verdict does not have to conform to a technical standard of accuracy. *Bencie v. Williams*, 337 Ill.App. 414, 86 N.E.2d 258 (4th Dist. 1949). When there is ambiguity or vagueness, if there is a reasonable basis from which the jury's intention can be deduced, the court can, notwithstanding, enter a judgment that gives effect to that intent. *General Wholesale Co. v. Illinois Central R.R.*, 26 Ill.App.2d 165, 167 N.E.2d 272 (3d Dist. 1960). However, the intent of the jury must be clear. *Couch v. State Farm Insurance Co.*, 279 Ill.App.3d 1050, 666 N.E.2d 24, 216 Ill.Dec. 856 (3d Dist. 1996).

Whenever the intention of the jury is clear, verdicts are to be liberally construed to allow correction of defects. *Young v. City of Centreville*, 169 Ill.App.3d 166, 523 N.E.2d 621, 119 Ill.Dec. 865 (5th Dist. 1988). However, such an amendment must reflect only what the jury clearly intended the verdict to be. *Anderson v. Smith*, 91 Ill.App.3d 938, 415 N.E.2d 643, 47 Ill.Dec. 638 (1st Dist. 1980). For example, if a jury returns a verdict in favor of the plaintiff under one theory while assessing damages to be awarded under that theory as \$0, the court could make the verdicts conform to the manifest intent of the jury. *Battles v. LaSalle National Bank*, 240 Ill.App.3d 550, 608 N.E.2d 438, 181 Ill.Dec. 365 (1st Dist. 1992). However, in *Smith v. City of Evanston*, 260 Ill.App.3d 925, 631 N.E.2d 1269, 1278, 197 Ill.Dec. 810 (1st Dist. 1994), the jury awarding money for one type of damage and “\$0” for others was held to be too ambiguous to allow the court to determine the jury’s intent.

VI. [13.25] ENTRY OF JUDGMENT ON THE VERDICT

735 ILCS 5/2-1201(b) provides that “[p]romptly upon the return of a verdict, the court shall enter judgment thereon.” The verdict is not the judgment of the court but the basis on which the judgment of the court is entered. *People ex rel. Wakefeld v. Montgomery*, 365 Ill. 478, 6 N.E.2d 868 (1937). The entry of the judgment is what starts the time running for the filing of posttrial motions and appeal. The signed jury verdict cannot be equated with the final judgment necessary to start time running under S.Ct. Rule 303. Judgment must be entered on the verdict in some manner. *Illinois State Toll Highway Authority v. Marathon Oil Co.*, 200 Ill.App.3d 836, 559 N.E.2d 497, 147 Ill.Dec. 324 (2d Dist. 1990). While the court has the power to amend a verdict to conform to the intent of the jury, it may do so only when the defect is one of form, rather than substance. *Crowell v. Parrish*, 159 Ill.App.3d 604, 512 N.E.2d 382 (5th Dist. 1987).

A. [13.26] Recording the Judgment

Once a judgment is rendered, it becomes the duty of the clerk to perform the ministerial act of recording the judgment as soon as “practicable.” 705 ILCS 105/14. The clerk is required to record the judgment as soon as practical. A fine of up to \$100 can be levied against a clerk who fails to act within 45 days of the rendering of a judgment. 705 ILCS 105/15. Subsequent offenses can result in the removal from office of the offending clerk. *Id.*

Although the act of the court constitutes the judgment, the record is conclusive evidence of what that act was. The judgment record is the only proper evidence of the judgment. The judgment cannot be changed or modified by extrinsic proof (*Matzenbaugh v. Doyle*, 156 Ill. 331, 40 N.E. 935 (1895)), or by stipulation of the parties as to what it should mean (*People ex rel. Niemoth v. Traeger*, 339 Ill. 356, 171 N.E. 548 (1930)).

Therefore, counsel should follow up to ensure that the clerk’s entry is correct. This is important as the clerk is authorized to spread of record the full and formal judgment order. Even when the court has passed judgment orally or notified the clerk in writing with the mere notation of “enter judgment” on some papers filed in the case, the clerk fills in the necessary information for a formal judgment. *Jasper v. Schlesinger*, 22 Ill.App. 637 (1st Dist. 1886). The date the

judgment on the verdict is recorded is vital. It establishes the date for measuring the timeliness of posttrial motions or appeal. *Phillips v. Gannotti*, 327 Ill.App.3d 512, 763 N.E.2d 820, 261 Ill.Dec. 571 (1st Dist. 2002). When there has been a clerical error in dating the recording of the judgment, the trial court can enter a nunc pro tunc order to correct the error. *Id.*

B. [13.27] Judgment Amount

The judgment must be fixed in the amount stated in the verdict. Generally, an award of damages in excess of the prayer for relief is proper. If the verdict exceeds the ad damnum, counsel should immediately move to amend the pleadings to state the higher amount. 735 ILCS 5/2-616(c). This rule does not apply in injury-to-person cases in which the ad damnum is pled to the minimum extent necessary to comply with the circuit rules of assignment. 735 ILCS 5/2-604. Note also a verdict in excess of \$50,000 in a law magistrate (LM) case must be reduced accordingly. *Grady v. Marchini*, 375 Ill.App.3d 174, 874 N.E.2d 179, 314 Ill.Dec. 269 (4th Dist. 2007).

Under the judgment interest statute, 735 ILCS 5/2-1303, the date the verdict is “made or rendered” is the date on which interest begins to accrue. If there is a delay between the return of the verdict and entry of judgment under §2-1303, the prevailing party is entitled to interest from the date of the verdict. *Illinois State Toll Highway Authority v. Heritage Standard Bank & Trust Co.*, 157 Ill.2d 282, 626 N.E.2d 213, 193 Ill.Dec. 180 (1993). It is mandatory that any interest accruing between the return of the verdict and entry of the judgment be calculated and included in the judgment when entered. *Duffek v. Vanderhei*, 104 Ill.App.3d 422, 432 N.E.2d 1052, 60 Ill.Dec. 153 (1st Dist. 1982). When a remittitur (*i.e.*, an order by the trial judge reducing damages) is ordered, interest does not accrue until the plaintiff accepts the remittitur. *Carter v. Kirk*, 256 Ill.App.3d 938, 628 N.E.2d 318, 194 Ill.Dec. 821 (1st Dist. 1993).

VII. [13.28] ENTRY OF JUDGMENT WHEN THERE IS NO VERDICT OF THE JURY

A substantial number of civil cases result in the entry of judgments without the return of a jury verdict. These occur when there is a directed finding prior to submission of the case to the jury or when the case was tried without a jury. The latter is commonly referred to as a “bench” trial.

In cases that receive judgments without a jury verdict, the judge usually announces the final judgment in open court, which the clerk then enters of record. Supreme Court Rule 272 provides that an oral judgment is considered entered the date that the clerk records it.

VIII. [13.29] WRITTEN JUDGMENT ORDERS

Circuit courts are not required to make findings of fact or conclusions of law in nonjury civil cases. *Guarantee Trust Life Insurance Co. v. Gildorn Insurance Midwest Corp.*, 240 Ill.App.3d 707, 608 N.E.2d 563, 181 Ill.Dec. 490 (1st Dist. 1992). However, in their absence, a reviewing

court will assume that all issues and controverted facts were found in favor of the prevailing party. *Nemeth v. Banhalmi*, 125 Ill.App.3d 938, 466 N.E.2d 977, 81 Ill.Dec. 175 (1st Dist. 1984).

A party may request permission to submit a proposed written judgment. In some areas, there is a practice of adopting the findings and conclusions offered by the prevailing party. This practice is acceptable, but a reviewing court will carefully scrutinize the record to determine whether the findings are supported. *Shapiro v. Regional Board of School Trustees of Cook County*, 116 Ill.App.3d 397, 451 N.E.2d 1282, 71 Ill.Dec. 915 (1st Dist. 1983). In certain areas, local circuit court rules require the prevailing party to prepare a written order.

The trial judge may also require the submission of a form of written judgment. When a written judgment is requested, the clerk should note the judgment, but it does not become final until the written document is signed by the court and spread of record. Supreme Court Rule 272 was intentionally amended to make it abundantly clear that when a written judgment is requested or required, the time limitations for posttrial motions or appeal do not begin until the written document is signed and becomes a judgment. *Northern Illinois Gas Co. v. Martam Construction Co.*, 240 Ill.App.3d 988, 608 N.E.2d 1271, 181 Ill.Dec. 797 (2d Dist. 1993).

IX. [13.30] SUMMARY OF APPLICABLE SECTIONS OF THE ILLINOIS CODE OF CIVIL PROCEDURE AND ILLINOIS SUPREME COURT RULES

The following sections of the Code of Civil Procedure are particularly relevant to the return of the verdict and entry of judgment.

- 735 ILCS 5/2-1107 Instructing the jury — Taking instructions and papers to the jury room
- 735 ILCS 5/2-1107.1 Jury instructions in tort actions
- 735 ILCS 5/2-1108 Verdict — Special interrogatories
- 735 ILCS 5/2-1109 Itemized verdicts
- 735 ILCS 5/2-1201 Return of verdict — Separate counts — Defective or unproved counts
- 735 ILCS 5/2-1303 Interest on judgment
- 735 ILCS 5/2-1706 Special findings required (medical malpractice actions)

The following Illinois Supreme Court Rules are particularly relevant to the return of the verdict and entry of judgment.

- S.Ct. Rule 272 When Judgment is Entered
- S.Ct. Rule 303 Appeals from Final Judgments of the Circuit Courts in Civil Cases