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## PRACTICE AREAS

Workers Compensation

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# Illinois Court considers timely service issue in workers' compensation appeal

May 20, 2010

In April, the Third District Appellate Court of Illinois handed down an interesting decision regarding the issue of whether the appellant timely served the summons in his appeal of a decision issued by the [Illinois Workers' Compensation Commission](#).

In [Hagemann v. Illinois Workers' Compensation Commission](#), No. 3-08-0989WC, one of the defendant-appellees (Sherman) asserted that pursuant to Supreme Court Rule 103(b), the plaintiff-appellant (Hageman) failed to exercise due diligence in serving the summons.

In reaching its decision, the court noted that precedent had established a list of factors to consider when ruling on a motion to dismiss under this provision, including: 1) the length of time used to obtain service of process, 2) the activities of the plaintiff, 3) the plaintiff's knowledge of the defendant's location, 4) the ease with which the defendant's whereabouts could have been ascertained, 5) the defendant's actual knowledge of pendency of the action as a result of ineffective service, 6) special circumstances that would affect the plaintiff's efforts, and 7) actual service on the defendant.

The court also noted that lack of prejudice is another consideration, but not necessarily a dispositive one.

Applying these factors to the case at hand, the court noted that Hagemann's counsel timely filed a request for summons with the circuit court, provided the clerk with the appropriate information needed to effect service and sent copies of the appellate documents via fax to opposing counsel during the appropriate time period. However, the circuit court clerk failed to timely issue the summons, erroneously



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believing that the county sheriff could not effect service of process on people located outside of the county. Service was eventually effected a few months later.

The court concluded that despite the delay, Hagemann's attorney was sufficiently diligent in effecting service:

(T)he totality of the circumstances, as discussed above, supports the judge's decision that Hagemann was reasonably diligent. Although service of summons was delayed, it cannot be reasonably said that Hagemann engaged in intentional delay for the purpose of indefinitely postponing service. We find no reversible error.

Howard Ankin of Ankin Law Office LLC ([www.ankinlaw.com](http://www.ankinlaw.com)) specializes in [workers' compensation](#) and [personal injury law](#). Mr. Ankin can be reached at (312) 346-8780 and [howard@ankinlaw.com](mailto:howard@ankinlaw.com).