



**10 South Riverside Plaza
Suite 1925
Chicago, Illinois 60606
312-454-5110
Fax: 312-454-6166
www.rusinlaw.com**

Michael E. Rusin 5119
John A. Maciorowski 5123
Mark P. Rusin 5120
Daniel W. Arkin 5115
Randall R. Stark 5117
R. Mark Cosimini ‡ 1713
Jigar S. Desai 5132
Kisa P. Sthankiya 5127
Jeffrey T. Rusin 5131
Patrick J. Jesse 5136
Jaclyn D. Jednachowski 5299
Douglas B. Keane* 5130
Robert E. Maciorowski 5135
Jeremy P. Sackmann 5138
Robert B. Ulrich 5227

Gregory G. Vacala § * 5298
Robert T. Newman § 5297
Joseph N. Casciato ☉ 5134
John Walker ☉ 9002

Brian G. Bendoff 5122
Glenn A. Blackmon 5128
Nicole Z. Breslau 5126
Craig E. Bucy 5221
Brendan T. Fallon 5116
Cassandra E. Halyko 5118
J. Ryan Head 5125
Kylee J. Jordan 8108
Evan G. Klug 5223
Derrick J.N. Lloyd 5229
Adam R. Maciorowski 5293
Michael T. Manseau 5133
Ryan Podges 5118
Olimpia C. Pietraszewski 5222
Katrina L. Robinson 5224
Terry E. Schroeder ‡ 1711
John C. Sturgeon 5220
Jonathan M. Zarate 5137

**Mark P. Rusin, Ltd. -
Affiliated**

§ Senior Counsel
☉ Of Counsel
‡ Champaign Office
* Also licensed in Missouri

Illinois Workers' Compensation Commission Update – April 2021

Michael E. Rusin
Rusin & Maciorowski
10 South Riverside Blvd., Suite 1925
Chicago, IL 60606
merusin@rusinlaw.com

Illinois Workers Compensation Commission - Personnel

The Illinois Workers' Compensation Commission consists of ten commissioners, one of whom serves as the chairman. For political balance, no more than six commissioners can be from one political party.

The nine commissioners who hear appeals in workers' compensation cases are broken down into three categories. There are three employer representatives, three employee representatives and three public representatives. Each commissioner must be appointed by the governor and confirmed by the Senate. They serve four-year terms. The terms are staggered so that five of the commissioners, including the chairman, have a term of office that begins with the governor's inauguration.

The remaining five commissioners have a term of office that ends two years into the governor's term. Since Gov. Pritzker took office in January 2019, that means in January 2021, five of the commissioner's terms of office ended. Those Commissioners needed to be reappointed or replaced within 60 days.

The five commissioners whose terms had expired were Commissioner Thomas Tyrrell, an employee representative, Commissioner Stephen Mathis, a public representative, Commissioner Elizabeth Coppoletti, an employer representative, Commissioner Barbara Flores, a public representative and Commissioner Deborah Simpson, an employer representative. Additionally, a sixth Commissioner Douglas McCarthy retired at the end of December 2020.

We expected changes to be made since the governor did not immediately reappoint all the commissioners whose terms expired in January 2021. We knew that several labor organizations and the plaintiff's bar wanted the governor to replace both employer representatives Coppoletti and Simpson. The third employer representative, Kathryn Doerries, was safe as her term does not expire until January 16, 2023. The governor had to decide on these appointments within 60 days or by March 19, 2021.

Not surprisingly, on March 19, 2021, the governor issued an order reappointing some of the commissioners and replacing others.

Governor Pritzker reappointed Commissioner Thomas Tyrrell as an employee representative. However, he was appointed to complete the term of retired Commissioner McCarthy so his term ends 1/16/2023.

He reappointed Commissioner Barbara Flores and Commissioner Stephen Mathis as public representatives.

He reappointed Commissioner Deborah Simpson as an employer representative.

The governor terminated Commissioner Coppoletti and replaced her with Arbitrator Christopher Harris, as an employer representative. His appointment as a commissioner and designation as an employer representative is surprising. Commissioner Harris did not come from a workers'

compensation background before his appointment to the Commission as an arbitrator on October 25, 2019. He was assigned an arbitration call in January 2020 in Chicago.

Finally, the governor appointed Arbitrator Deborah Baker to the Commission as an employee representative. This was a full-term appointment for four years. Commissioner Baker was appointed as an arbitrator in November 2019. She is a short-term Commission employee who worked primarily as a petitioner's attorney prior to the appointment.

The terms of Commissioners Baker, Flores, Harris, Mathis and Simpson all run to January 20, 2025. The term of Commissioner Tyrrell only goes to January 16, 2023.

Panel Realignment

As a result of these appointments, the Commission has realigned the panels. The panels of commissioners that will hear appeals is now as follows:

1. Panel A – Public Member Maria Portela, Labor Member Thomas Tyrrell, Employer Member Kathryn Doerries
2. Panel B – Public Member Stephen Mathis, Labor Member Deborah Baker, Employer Member Deborah Simpson
3. Panel C – Public Member Barbara Flores, Labor Member Mark Parker, Employer Member Christopher Harris

The Chairman further reassigned the Downstate Commissioner assignments and Chicago review calls for the new commissioners.

Labor Commissioner Baker is taking over the Chicago and Waukegan calls that were previously assigned to former Employer Commissioner Coppoletti.

Employer Commissioner Harris is taking over the Chicago and Springfield calls that were previously assigned to former Labor Commissioner McCarthy.

This realignment and readjustment is significant in that you have a labor commissioner taking over status calls previously handled by an employer commissioner. Further, you have an employer commissioner now taking over calls that were previously handled by a labor commissioner.

With this realignment of commissioners, it is likely that Panel B will be the most employer friendly panel and Panel C will be the most employee friendly panel.

Changes at the Arbitration Level

The Commission currently has 33 budgeted arbitrator positions. There are currently 30 arbitrators appointed. There are currently 31 status calls – 13 in Chicago and 18 Downstate.

We have really seen a fairly large turnover at the arbitration level in the past year. As a result of retirements and terminations, out of the 30 currently appointed arbitrators, 11 have been appointed in the last year or so. Training for those new arbitrators has been difficult because of the pandemic. Normally, new appointees would shadow existing arbitrators for several months before beginning to handle their own cases. That really has not been able to happen, especially with the appointees after March 2020. Most of the new arbitrators appointed had prior workers' compensation trial background. However, at least three were attorneys without significant prior workers' compensation experience. Many of the appointees are relatively young. The decision to accept such a position is not necessarily surprising as they may be trying to build a resume for the future. However, any appointment as an arbitrator is only for a three-year term and reappointment is at the discretion of the governor.

Arbitrators serve three-year terms that end in July. The terms are staggered so that one third of the arbitrators is up for appointment every three years.

At the beginning December 2020, Governor Pritzker appointed three new arbitrators. He appointed Attorneys Rachael Sinnen, Raychel Wesley and Bradley Gillespie. When he appointed these three arbitrators, no open status call positions were available, and they were not given any permanent assignments. We had anticipated that Arbitrator Sinnen would eventually get an arbitration appointment in Chicago. We anticipated both Arbitrator Wesley and Arbitrator Gillespie to get downstate assignments. However, status call openings were created at the arbitration level because of arbitrator retirements and arbitrator appointments to the Commission. There are currently not enough arbitrators to fill all the current arbitration slots.

Arbitrator Rachael Sinnen, as expected, has been appointed to a Chicago trial call. She has taken over the trial call previously assigned to Arbitrator Napleton. This trial call became available when Arbitrator Napleton was earlier moved to a downstate assignment in Zone 5 including Rockford, Waukegan, and Woodstock (Erbacci retirement).

Arbitrator Bradley Gillespie, as expected, was given a downstate status call assignment. He has been assigned to Zone 3, which includes Bloomington, Peoria and Rock Island. This position became open when Arbitrator Granada was moved from that zone to Zone 6, where Arbitrator Granada now handles trial calls in Wheaton, Geneva, and Elgin.

Arbitrator Raychel Wesley has been assigned to a Chicago status call. With the appointment of Arbitrator Baker to the Commission, her status call became open and has been assigned to Arbitrator Wesley.

Finally, the Chicago arbitration status call assigned to Arbitrator now Commissioner Harris is open. The Commission now lists this status call as TBA 1 (To Be Announced 1). For now, that status call and those trial dates will be assigned on a monthly basis to an existing (likely downstate) arbitrator. For April 2021, that status call is being assigned to Arbitrator Granada.

Attached at the end of this article is a current breakdown of the Chicago and downstate arbitration status calls.

There are currently 33 budgeted arbitration positions. Three (3) arbitration positions are open, and it is reasonable to expect at least 1 or 2 will be promptly appointed.

The arbitrators whose terms end June 30, 2021 include Joseph Amarilio, Paul Cellini, Steven Friedman, Gerald Granada, Jessica Hegarty, Adam Hinrichs, Jeffrey Huebsch, Maureen Pulia, Melinda Rowe-Sullivan and Douglas Steffenson. It is reasonable to expect that most if not all of those arbitrators will be reappointed. The oldest arbitrators in that group are Arbitrators Amarilio and Friedman who are both about 70 years old, but neither seems interested in retirement.

Practice and Procedure

Despite the pandemic, the Commission never closed its doors completely. For many months after the start of the pandemic, the Commission had a very reduced schedule. However, there were still frequent in-person court appearances, and we regularly appeared before the Commission for pro-se settlements.

For most of 2020, after the start of the pandemic, the Commission had a hybrid hearing schedule. Arbitrators handled their pre-trials remotely versus WebEx and had limited in person trials. However, with the spike in COVID cases in November 2020, the chairman discontinued all in-person hearings. However, with the decrease in cases and the reopening of the state, the chairman allowed in-person hearings to begin February 1, 2021. The Commission has held a hybrid schedule since then with a mixture of pre-trials and trials. Pre-trials are held during the beginning of an arbitrator's trial cycle and trial dates are set at the end of the trial cycle. For most cases involving petitions for immediate hearing, those cases are set for pre-trial early in the trial cycle so that if an agreement cannot be reached, the case could be set for an in-person hearing and trial later in the trial cycle.

The Commission has continued to have more in-person hearings in 2021. However, the number of in-person hearing dates are still extremely limited. Every month the chairman posts procedures for the following month including a Commission calendar and an arbitrator calendar.

Prior to the pandemic in Chicago, each arbitrator had a monthly status call date and then eight trial dates. On each status call date, the parties could present motions for trial and requests for hearing and be assigned a trial date on one of the eight trial dates. On each trial date, the parties would appear before the arbitrator and request a pre-trial or a trial. Arbitrators generally would hear pre-trials first and start trials later in the day after pre-trials were completed.

With the pandemic, the basic schedule did not change but pre-trials were moved online through WebEx. The chairman did not force the arbitrators to hold a standard schedule for pre-trials. Therefore, the handling and scheduling of pre-trials was left up to the arbitrators. Most of the arbitrators scheduled pre-trial conferences in 10-20-minute increments starting as early as 7:00 a.m. and going as late as 6:00 p.m.

The procedure for the downstate arbitrators was the same. Each downstate arbitrator had a status call and depending on the size of the status call, each arbitrator would have between 3-8 trial dates.

The biggest difference in the 2021 calendar is the chairman has increased the number of trial dates for the arbitrators. In Chicago, every arbitrator has a status call date and now 9 pre-trial/trial dates. For downstate calls, each arbitrator has a status call and a minimum of 3, but up to 9, pre-trial/trial dates for the bigger downstate status calls such as Collinsville, Peoria, Joliet, Rockford, Waukegan, Wheaton and Geneva.

Since the arbitrators are doing more pre-trials and less trials, the expansion of the number of hearing dates for the arbitrators is well justified.

For the Chicago status calls, every month the arbitrators have a status call day and 9 hearing days. In April 2021, the arbitrators' 9 hearing days are broken into pre-trial days and trial days. 5 days are currently set for pre-trial conferences, which are done via WebEx and 4 days are set for trial days.

For the Downstate calls, each of the arbitrators has a status call day, and depending on the length of the status call, they will have 2-5 pre-trial days and 2-4 trial days.

For the downstate calls, the trial locations have been consolidated.

For Zone 1, (Collinsville, Herrin, Mt. Vernon) all trials are held in Collinsville.

For Zone 2, (Urbana, Springfield, Quincy) all trials are held in Springfield.

For Zone 3, (Bloomington, Peoria, Rock Island) all trials are held in Peoria.

For Zone 4, (Joliet, Kankakee, Ottawa) all trials are held in Chicago.

For Zone 5, (Rockford, Waukegan, Woodstock) all trials are held in Rockford.

For Zone 6, (Wheaton, Geneva, Elgin) all trials are held in Chicago.

The location of the trials varies based on the availability of hearing sites. Many of the downstate courthouses where hearings are usually held have been closed.

For hearings before the Commission, all preliminary and review calls hearings are currently being held via WebEx.

Additionally, all oral arguments before the Commission are being done telephonically. This is true for both Springfield and Chicago oral arguments.

The Chairman expects this hybrid procedure to last the next two and a half months. He expects that we will return to the actual downstate calls on July 1, 2021.

Commission Moving to new location

The Commission is moving. The Commission is leaving the Thompson center soon. The Commission is moving its administrative offices to 69 W. Washington Street, Chicago, IL 60602. The Commission is moving its Chicago hearings/trials site to the basement of the Daley Center, 50 W. Washington Street, Chicago, IL 60602. The Daley Center already houses the Cook County Circuit Court and Circuit Clerk. We expect this move to occur in May 2021 to June 2021. This is the first move for the Commission in over 35 years. The Commission had moved to the Thompson Center when it opened in 1985.

Commission Expands Electronic Filing – CompFile Release 3

The Commission has always had a paper-based filing system. Moreover, many of the filings were required to be on different colored paper. Settlement contracts were pink, petitions for immediate hearing blue, etc. The Commission has been slow to move to an electronic filing system.

Last summer, the Commission implemented the CompFile program. It required the parties to submit all settlement contracts electronically. After the parties agree to a settlement, the standard procedure is for Respondent's attorney to draft settlement contracts and route them to the petitioner's attorney for review, execution and submission to the Commission. CompFile procedures applied to all settlement contracts where both parties were represented by an attorney.

Pro-se settlement contracts were still processed via paper.

On April 21, 2021, the CompFile electronic filing program is being expanded greatly. The Commission expects all filing to be done electronically. Pending the April 21, 2021 start date, the system will go down April 15, 2021 to April 20, 2021.

The expanded CompFile program will require petitioners to file their Applications electronically. Respondents will be required to file Appearances electronically. The parties will be required to use CompFile to file motions and petitions. All transcripts will become electronic, and pro-se settlements will be handled electronically as well. The Commission will issue more details on this change.

All motions will be required to be filed electronically, and this will first apply to the trial call of May 10, 2021.

Commission Filings

Not surprisingly, Commission filings continue to be far reduced from past years.

In 2019, the total number of cases filed was approximately 37,500. In 2020, the total number of cases filed was just under 32,000. As of right now, it appears the case filings for 2021 will be at a rate of about 30,000 for the year.

IWCC in Transition

We expect the Commission to change its operations and case handling through 2021. The Commission is regulated by the Illinois Workers' Compensation Act, the Rules of the Illinois Workers' Compensation Commission, and case decisions.

The Illinois Workers' Compensation Act has not significantly changed since the start of the pandemic. The only significant change made was the creation of the rebuttable presumption in favor of "essential workers." That rebuttable presumption has been extended to June 30, 2021.

There have not been any formal changes to the Rules of the Illinois Workers' Compensation Commission, however the Chairman has continued to change the Rules on basically a monthly basis during the pandemic. Many of the rules and requirements set forth in the Rules have been modified and changed. The rules for setting trials and holding trials are definitely changed.

Under the "Rules," cases can only be set for trial when they appear on the printed status call, unless they involve a petition for immediate hearing. This rule is being routinely ignored.

The Chairman has encouraged and allowed extreme flexibility with respect to setting cases for pre-trial and trial. It is not exactly for a free-for-all, but it is close.

Going forward, we expect any case can and will be motioned for trial at the discretion of the parties. We expect, following the motion for trial, the case will be assigned a pre-trial date during that month of the trial cycle. Thereafter, following the pre-trial conference, the case is likely to be set for trial during the following month.

We expect many other types of flexible changes at the arbitration level.

The parties cannot expect that their cases will be tried by the arbitrator to whom the case is assigned. This is especially true for the downstate calls. The Chairman expects that at many of the downstate calls where hearings have been more limited, he may assign additional arbitrators to appear at some of the larger trial calls simply to hear trials. We expect that two arbitrators may appear for trials on trial dates downstate. The most likely locations where this will occur will include Collinsville, Springfield, Peoria, Joliet, Rockford, and Wheaton.

It is important that we recognize that strict adherence to many of the various rules regarding the setting of trial will not be applied or enforced. Employers should not expect the 15-day rule for filing a request for hearing to be enforced. Arbitrators will allow late petitions for hearing and motions for trial, especially where they are expecting to set the case for pre-trial prior to trial.

Employers and carriers should expect greater flexibility to occur with the setting of hearings, especially in the next year.

Employers should use this flexibility to their advantage as well. We have been aggressively filing motions for trial and obtaining pre-trial and trial dates to force cases to resolution. Many of the arbitrators have been sympathetic to employer efforts to continue to resolve cases during the pandemic.

We should not expect a return to the past. The Commission will never operate the way it did pre-pandemic. This is partly based on the advent of electronic filing, but it is also partly based on the experiences of having remote hearings during the pandemic.

Certainly, after July 2021, we expect the Commission will continue to have a hybrid hearing schedule and never return to solely an in-person hearing schedule.

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ILLINOIS WORKERS' COMPENSATION COMMISSION

Chicago Arbitration Schedule 2021

Each arbitrator has 8 trial dates per month. Trial dates begin two to four days after the status call. Cases are continued on a 3 month cycle. Each arbitrator will review their own pro se settlement contracts.

January 2021

4 Huebsch
5 Watts
6 Carlson
7 Amarilio
8 Mason
11 Llerena
12 Sinnen
13 TBA1
14 Kane
15 Fruth
19 McLaughlin
20 Wesley
21 Steffenson

April 2021

1 Huebsch
5 Watts
6 Carlson
7 Amarilio
8 Mason
9 Llerena
12 Sinnen
13 TBA1
14 Kane
15 Fruth
16 McLaughlin
19 Wesley
20 Steffenson

July 2021

1 Huebsch
2 Watts
6 Carlson
7 Amarilio
8 Mason
9 Llerena
12 Sinnen
13 TBA1
14 Kane
15 Fruth
16 McLaughlin
19 Wesley
20 Steffenson

October 2021

1 Huebsch
4 Watts
5 Carlson
6 Amarilio
7 Mason
8 Llerena
12 Sinnen
13 TBA1
14 Kane
15 Fruth
18 McLaughlin
19 Wesley
20 Steffenson

February 2021

1 Huebsch
2 Watts
3 Carlson
4 Amarilio
5 Mason
8 Llerena
9 Sinnen
10 TBA1
11 Kane
16 Fruth
17 McLaughlin
18 Wesley
19 Steffenson

May 2021

3 Huebsch
4 Watts
5 Carlson
6 Amarilio
7 Mason
10 Llerena
11 Sinnen
12 TBA1
13 Kane
14 Fruth
17 McLaughlin
18 Wesley
19 Steffenson

August 2021

2 Huebsch
3 Watts
4 Carlson
5 Amarilio
6 Mason
9 Llerena
10 Sinnen
11 TBA1
12 Kane
16 Fruth
16 McLaughlin
17 Wesley
18 Steffenson

November 2021

1 Huebsch
2 Watts
3 Carlson
4 Amarilio
5 Mason
8 Llerena
9 Sinnen
10 TBA1
12 Kane
15 Fruth
16 McLaughlin
17 Wesley
18 Steffenson

March 2021

1 Huebsch
2 Watts
3 Carlson
4 Amarilio
5 Mason
8 Llerena
9 Sinnen (Napleton)
10 TBA1 (Harris)
11 Kane
12 Fruth
15 McLaughlin
16 Wesley (Baker)
17 Steffenson

June 2021

1 Huebsch
2 Watts
3 Carlson
4 Amarilio
7 Mason
8 Llerena
9 Sinnen
10 TBA1
11 Kane
14 Fruth
15 McLaughlin
16 Wesley
17 Steffenson

September 2021

1 Huebsch
2 Watts
3 Carlson
7 Amarilio
8 Mason
9 Llerena
10 Sinnen
13 TBA1
14 Kane
15 Fruth
16 McLaughlin
17 Wesley
20 Steffenson

December 2021

1 Huebsch
2 Watts
3 Carlson
6 Amarilio
7 Mason
8 Llerena
9 Sinnen
10 TBA1
13 Kane
14 Fruth
15 McLaughlin
16 Wesley
17 Steffenson

ILLINOIS WORKERS' COMPENSATION COMMISSION

Downstate Arbitration Schedule 2021

Zone		Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec
1	Collinsville - AuBuchon¹, Gallagher², Cantrell³	14 ¹	10 ²	12 ³	13 ¹	14 ²	11 ³	16 ¹	13 ²	10 ³	15 ¹	12 ²	15 ³
1	Herrin - AuBuchon ¹ , Gallagher ² , Cantrell ³	7 ²	3 ³	4 ¹	8 ²	10 ³	7 ¹	12 ²	9 ³	8 ¹	12 ²	8 ³	13 ¹
1	Mt. Vernon - AuBuchon¹, Gallagher², Cantrell³	5 ³	2 ¹	2 ²	6 ³	10 ¹	2 ²	6 ³	3 ¹	1 ²	4 ³	2 ¹	2 ²
2	Urbana - O'Brien ¹ , Pulia ² , Lee ³	12 ¹	9 ²	9 ³	9 ¹	10 ²	11 ³	12 ¹	9 ²	3 ³	8 ¹	5 ²	13 ³
2	Springfield - O'Brien¹, Pulia², Lee³	15 ²	11 ³	18 ¹	14 ²	14 ³	17 ¹	19 ²	18 ³	14 ¹	18 ²	10 ³	16 ¹
2	Quincy - O'Brien ¹ , Pulia ² , Lee ³	6 ³	3 ¹	3 ²	7 ³	5 ¹	2 ²	7 ³	4 ¹	1 ²	6 ³	3 ¹	1 ²
3	Bloomington - Rowe-Sullivan¹, Gillespie², Hinrichs³	21 ¹	18 ²	22 ³	19 ¹	20 ²	22 ³	22 ¹	19 ²	17 ³	6 ¹	18 ²	14 ³
3	Peoria - Rowe-Sullivan ¹ , Gillespie ² , Hinrichs ³	7 ³	9 ¹	8 ²	12 ³	10 ¹	7 ²	12 ³	9 ¹	8 ²	15 ³	5 ¹	2 ²
3	Rock Island - Rowe-Sullivan¹, Gillespie², Hinrichs³	4 ²	1 ³	1 ¹	5 ²	3 ³	1 ¹	6 ²	2 ³	1 ¹	4 ²	1 ³	6 ¹
4	Joliet - Doherty ¹ , Cellini ² , Hegarty ³	4 ¹	1 ²	1 ³	1 ¹	3 ²	1 ³	1 ¹	2 ²	1 ³	4 ¹	1 ²	1 ³
4	Kankakee - Doherty¹, Cellini², Hegarty³	19 ²	16 ³	15 ¹	13 ²	14 ³	11 ¹	16 ²	13 ³	20 ¹	15 ²	12 ³	10 ¹
4	Ottawa - Doherty ¹ , Cellini ² , Hegarty ³	22 ³	19 ¹	19 ²	20 ³	21 ¹	18 ²	23 ³	20 ¹	10 ²	22 ³	19 ¹	20 ²
5	Rockford - Napleton¹, Seal², Glaub³	8 ¹	11 ²	8 ³	9 ¹	10 ²	7 ³	8 ¹	6 ²	7 ³	8 ¹	5 ²	9 ³
5	Waukegan - Napleton ¹ , Seal ² , Glaub ³	13 ²	4 ³	12 ¹	14 ²	14 ³	17 ¹	16 ²	13 ³	9 ¹	15 ²	15 ³	16 ¹
5	Woodstock - Napleton¹, Seal², Glaub³	6 ³	3 ¹	3 ²	7 ³	5 ¹	2 ²	7 ³	4 ¹	1 ²	6 ³	3 ¹	3 ²
6	Wheaton - Soto ¹ , Granada ² , Friedman ³	14 ¹	10 ²	17 ³	13 ¹	14 ²	16 ³	16 ¹	17 ²	13 ³	15 ¹	12 ²	15 ³
6	Geneva - Soto¹, Granada², Friedman³	7 ³	5 ¹	10 ²	7 ³	6 ¹	7 ²	12 ³	4 ¹	2 ²	7 ³	3 ¹	7 ²
6	Elgin - Wheaton II Soto ¹ , Granada ² , Friedman ³	4 ²	1 ³	8 ¹	5 ²	3 ³	1 ¹	1 ²	2 ³	3 ¹	4 ²	1 ³	1 ¹
Zone		Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec

Michael E. Rusin

Rusin & Maciorowski, Ltd.

312-454-5119 merusin@rusinlaw.com

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Cases are continued on a 3-month cycle.