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Robert G. Johnston

Thomas P. Higgins

MOTIONS *IN LIMINE*: USE AND CONSEQUENCES IN ILLINOIS[1]

PROFESSOR ROBERT G. JOHNSTON* AND THOMAS P. HIGGINS**

I. AN OVERVIEW

A motion *in limine* is a pretrial motion on which a judge may enter a ruling regarding the admissibility of proffered evidence.[2] Black's Law Dictionary defines a "motion *in limine*" as "[a] written motion which is usually made before or after the beginning of a jury trial for a protective order against prejudicial questions and statements."[3] It is commonly used as a pretrial motion that is most effective if presented in written form with an accompanying memorandum of points and authorities. However, a motion *in limine* may also be presented in the form of an oral motion made just before jury selection or during trial, but out of the presence of the jury. A written motion presented prior to trial may result in an absolute ruling that evidence is admitted or excluded, or the judge may issue a conditional or preliminary ruling that certain evidence may not be so much as hinted to until a proper foundation is established.[4] The oral motion made during trial will usually result in an absolute ruling due to the immediacy of the issue. Further, when a party makes an oral motion *in limine*, it is most likely foreseeable how the evidence will fit into the trial.

Most courts and commentators agree that the authority to grant motions *in limine* is inherent in a trial court's power to admit and exclude evidence in order to ensure a fair trial.[5] In Illinois,

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* J.D., University of Chicago, 1960; Professor and Associate Dean, The John Marshall Law School, Chicago, IL.

** J.D., The John Marshall Law School, 1990; Associate, Prusak, Wine & Wombacher, Peoria, IL.

2. Beasley v. Huffman Mfg. Co., 97 Ill. App. 3d 1, 5, 422 N.E.2d 241, 244 (3d Dist. 1981).

3. BLACK'S LAW DICTIONARY 526 (Abridged 5th ed. 1983).

4. *See Beasley*, 97 Ill. App. 3d at 6, 422 N.E.2d at 244 (conditioning the admission of evidence that had more than one implication on counsel obtaining a ruling outside the presence of jury).

5. *See* Douglas L. Colbert, *The Motion in Limine in Politically Sensitive Cases: Silencing the Defendant at Trial*, 39 STAN. L. REV. 1271, 1276 (1987) (asserting that it is within the court's authority to manage the course of the trial).

motions *in limine* are not expressly authorized.[6] However, courts have acknowledged the motion as part of Illinois civil procedure.[7] It may be impliedly within the reach and realm of Illinois Supreme Court Rule 218 which provides that a trial court may hold a pretrial conference to resolve issues that may allow for a quicker, more efficient trial.[8]

II. USE OF THE MOTION *IN LIMINE*

Either party to an action may use a motion *in limine*. Parties may use this motion to obtain a ruling to exclude or to admit evidence.[9] The evidence sought to be excluded may be inadmissible because it is irrelevant or, even if relevant, it is unfairly prejudi-

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6. *Beasley*, 97 Ill. App. 3d at 5, 422 N.E.2d at 244. See also Colbert, *supra* note 5, at 1276 n.33, which notes that a motion *in limine* has not been codified in any state statute or authorized in the federal rules of criminal or civil procedure.

7. *Beasley*, 97 Ill. App. 3d at 5, 422 N.E.2d at 244.

8. ILL. S. CT. RULE 218 (1984) (ILL. REV. STAT. ch. 110A, para. 218 (1991)). This rule compliments the inherent power of the trial courts to entertain motions *in limine*. *Id.* Illinois Supreme Court Rule 218, in reference to civil actions, states in part:

> the court may hold a pretrial conference. At the conference counsel familiar with the case and authorized to act shall appear, with or without the parties as the court directs, to consider: (1) the simplification of the issues; (2) amendments to the pleadings; (3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof; (4) the limitation of the number of expert witnesses; and (5) any other matters which may aid in the disposition of the action. *Id.*

Similarly, Rule 16 of the Federal Rules of Civil Procedure permits federal courts to narrow the issues and consider matters that will aid in disposing of an action. FED. R. CIV. P. 16. This rule is similar in form and substance to Illinois Supreme Court Rule 218. *Id.*

It should be noted that Rule 403 of the Federal Rules of Evidence requires the exclusion of prejudicial evidence and provides a basis for the use of motion *in limine* in federal procedure. FED. R. EVID. 403. The rule provides that regardless of its relevance, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Id.*

Rule 16 of the Federal Rules of Civil Procedure is used by district courts as a basis for forming local pretrial rules. FED. R. CIV. P. 16. For example, the United States District Court for the Northern District of Illinois adopted Local Rule 5.00-5.99 in a final pretrial order form. *See* N.D. ILL. RULE 5.00-5.99 (1993). The rule requires an extensive pretrial order that governs the course of the trial. *Id.* It specifically requires "difficult or unusual problems of . . . evidence [that] are likely to arise during the trial . . . [to] be called to the Court's attention, together with a statement of the partys' contentions and most important authorities." *Id.* It goes on to require "all motion in limine [to] be filed with supporting briefs *at the time of the filing of the Order*." *Id.* (emphasis in original).

9. MICHAEL GRAHAM, HANDBOOK OF ILLINOIS EVIDENCE, § 103.9, at 21-24 (4th ed. 1984).

cial.[10] Today, the motion *in limine* is used in both civil and criminal cases.[11] Although it should be used with caution,[12] particularly

10. Mack v. First Sec. Bank of Chicago, 158 Ill. App. 3d 497, 504, 511 N.E.2d 714, 719 (1st Dist. 1987) (finding that the probative value of relevant evidence must outweigh the danger of potential prejudice).

11. For cases that illustrate the use of a motion *in limine*, see, e.g., Tzystuck v. Chicago Transit Auth., 124 Ill. 2d 226, 240, 529 N.E.2d 525, 531 (1988) (granting plaintiff's motion *in limine* barring discovery deposition evidence of an incompetent witness); People v. Whitehead, 116 Ill. 2d 425, 442, 508 N.E.2d 687, 694 (1987) (limiting the scope of defendant's psychiatric evaluations in murder trial); Marotta v. General Motors Corp., 108 Ill. 2d 168, 178, 483 N.E.2d 503, 507 (1985) (denying the use of motion *in limine* which precluded the admission of a loan receipt agreement); Jones v. Karraker, 98 Ill. 2d 487, 495, 457 N.E.2d 23, 27 (1983) (sustaining plaintiff's motion *in limine* that prohibited defendant from eliciting testimony regarding the illegitimacy status of plaintiff's unborn child); People v. Bartall, 98 Ill. 2d 294, 314, 456 N.E.2d 59, 69 (1983) (denying defendant's motion *in limine* that would preclude the state from introducing evidence of defendant's subsequent criminal act); Bargman v. Economics Lab., Inc., 181 Ill. App. 3d 1023, 1028, 537 N.E.2d 938, 941 (3d Dist. 1989) (reversing trial court's grant of defendant's motion *in limine* that precluded plaintiff from commenting on defendant's failure to call an expert witness in his closing argument); Corrales v. American Cab Co., 170 Ill. App. 3d 907, 911, 524 N.E.2d 923, 925 (1st Dist. 1988) (holding that a motion *in limine* did not preclude alleged undisclosed witness' testimony); People v. Russell, 177 Ill. App. 3d 40, 49, 531 N.E.2d 1099, 1105 (2d Dist. 1988) (refusing to grant defendant's motion *in limine* since plaintiff's prior bad act was not relevant); Holmes v. Anguiano, 174 Ill. App. 3d 1081, 1085, 529 N.E.2d 300, 303 (3d Dist. 1988) (reversing trial court's grant of defendant's motion *in limine* that excluded a prior felony conviction); People v. Duncan, 173 Ill. App. 3d 554, 558, 527 N.E.2d 1060, 1062 (3d Dist. 1988) (holding the prosecution's motion *in limine* would be allowed to admit defendant's prior testimony from his first trial); *In re* E.P., 167 Ill. App. 3d 534, 540, 521 N.E.2d 603, 607 (4th Dist. 1988) (denial of respondent's motion *in limine* to exclude hearsay testimony in a juvenile proceeding); Smith v. Central Ill. Pub. Serv. Co., 176 Ill. App. 3d 482, 495, 531 N.E.2d 51, 59 (4th Dist. 1988) (allowing plaintiff's motion *in limine* that prohibited defendant from introducing evidence of a violation of the Structural Work Act); Greco v. Coleman, 176 Ill. App. 3d 394, 398, 531 N.E.2d 46, 49 (4th Dist. 1988) (holding that trial court properly granted motion *in limine* that barred evidence that plaintiff's disability occurred before alleged negligence).

The motion *in limine* has various applications with respect to the use of expert witnesses. The motion is commonly used to obtain a ruling to bar an opposing party from calling any expert witnesses who were not disclosed pursuant to Rule 220 requirements. *See, e.g.*, Beiermann v. Edwards, 193 Ill. App. 3d 968, 978, 550 N.E.2d 587, 595 (2d Dist. 1990), *appeal denied*, 132 Ill. 2d 543, 555 N.E.2d 374 (1990) (holding that the trial court properly denied plaintiff's motion *in limine* barring testimony of treating physician on basis that Rule 220 disclosure requirements did not apply); Corrales v. American Cab Co., 170 Ill. App. 3d 907, 911, 524 N.E.2d 923, 925 (1st Dist. 1988) (holding that an order *in limine* barring parties from calling witnesses not previously disclosed did not preclude defendant's offered testimony of physician, because plaintiff seasonably disclosed the witness as a consulting physician).

The motion is also used to control the scope of testimony and oral arguments made during the course of trial. *See, e.g.*, Schuchman v. Stackable, 198 Ill. App. 3d 209, 228-30, 555 N.E.2d 1012, 1024-26 (5th Dist. 1990), *appeal denied*, 133 Ill. 2d 573, 561 N.E.2d 708 (1990) (holding that the trial court properly granted movant's oral motion *in limine* to preclude expert medical physician from reading from notes of medical literature or otherwise summarizing the literature or testifying to the content of any treatise, journal or other work); O'Brien v. Meyer, 196 Ill. App. 3d 457, 462-65, 554 N.E.2d 257, 261-62 (1st Dist.

in a criminal case so as not to exclude relevant evidence, pretrial motions *in limine* are favored in order to exclude irrelevant or prejudicial evidence at trial.[13]

A motion *in limine* allows a party to obtain a ruling admitting or excluding evidence without exposing the jury to such evidence.[14] Thus, use of the motion *in limine* prevents possible delays and limits the potential for embarrassment. An opponent of proffered evidence can avoid emphasizing such evidence through objections at trial, by questioning its admissibility out of the jury's presence.[15] The proponent of the evidence avoids offering evidence that may be excluded and thereby appearing to seek admission of improper evidence. When the admissibility of evidence is argued before a jury, an instruction to the jury to disregard arguments of counsel or excluded evidence is available. However, such instruction may not only fail to erase the prejudicial effect of the arguments or excluded evidence, but may actually draw attention to them.[16]

While originally used to address specific items of evidence, motions *in limine* now address claims and defenses as well. It has been suggested that use of the motion *in limine* for these purposes should be limited to exceptional rather than general circumstances.[17] The court in *Bradley v. Caterpillar Tractor Co.* notes that the motion *in limine* "is usually used to prohibit mention of some specific matter, such as an inflammatory piece of evidence" and it "is not ordinarily employed to choke off an entire claim or de-

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1989), *appeal denied*, 133 Ill. 2d 560, 561 N.E.2d 695 (1990) (holding that the trial court erred in denying plaintiff's motion to preclude references to fact that proponent's expert witness, a licensed physician in Florida, failed to pass the Illinois licensing exam four times); Bargman v. Economics Lab., Inc., 181 Ill. App. 3d 1023, 1028, 537 N.E.2d 938, 941-42 (3d Dist. 1989), *appeal denied*, 127 Ill. 2d 611, 545 N.E.2d 104 (1989) (holding that the trial court improperly granted defendant's motion *in limine* precluding plaintiff from commenting on defendant's failure to call a witness within its control).

12. *See* Reidelberger v. Highland Body Shop, Inc., 83 Ill. 2d 545, 416 N.E.2d 268 (1981). The Supreme Court of Illinois advised caution in the use of this motion because of the possibility that incorrectly granting such a motion may "unduly restrict the opposing party's presentation of its case." *Id.* at 550, 416 N.E.2d at 271.

13. People v. Downey, 162 Ill. App. 3d 322, 334, 515 N.E.2d 362, 369 (2d Dist. 1987), *appeal denied*, 119 Ill. 2d 563, 522 N.E.2d 1249 (1988) (upholding the trial court's order *in limine* which barred defendant from presenting evidence of his cocaine addiction).

14. Beasley v. Huffman Mfg. Co., 97 Ill. App. 3d 1, 5, 422 N.E.2d 241, 244 (3rd Dist. 1981).

15. *Id.*

16. *Id.* (ruling that, in order to preserve the record for appeal, counsel must object at trial when the presentation of certain evidence violates an order *in limine*).

17. Bradley v. Caterpillar Tractor Co., 75 Ill. App. 3d 890, 900, 394 N.E. 2d 825, 833 (5th Dist. 1979) (quoting Lewis v. Buena Vista Mut. Ins. Ass'n, 183 N.W.2d 198, 201 (Iowa 1971)).

fense."[18] When a motion *in limine* is used to exclude a claim or defense its function essentially becomes synonymous with that of a motion for a full or partial summary judgment.[19]

III. FORM AND SUBSTANCE

A motion and order *in limine* should be in writing. It is to the movant's advantage to have a well-prepared written motion that will afford the court ample opportunity to make a clear and concise ruling. Likewise, once a ruling is made, an order should be drafted which precisely reflects the court's decision. The order should clearly and specifically state questions or items of evidence covered by the court's ruling.[20]

> The ability to restrict interrogation makes the *in limine* order a powerful weapon. This power, however, also makes it a potentially dangerous one. Before granting a motion *in limine*, courts must be certain that such action will not unduly restrict the opposing party's presentation or its case. Because of this, it is imperative that the *in limine* order be clear and that all parties concerned have an accurate understanding of its limitations.[21]

Therefore, an order should be drafted which accurately reflects the ruling made and the parties should be in agreement as to the substance and coverage of the order.

The need for a written motion and order is illustrated in *Lockett v. Bi-State Transit Authority*.[22] *Lockett* involved a wrongful death case arising out of a collision between a car and a bus. The estate of the deceased car driver brought an action against the bus company. The defendant's lawyer orally asked for an *in limine* order excluding reference to the bus driver's driving record. He stated his motion three times. Each time he stated the substance of the motion differently. The trial court ruled: "As for this Motion *In Limine*, I will grant this motion."[23] During trial, the defendant's lawyer claimed the plaintiff had violated the motion. The jury returned a verdict for the plaintiff, and the court denied the defendant's post-trial motion. The appellate court reversed the trial court. The supreme court granted leave to appeal and reversed the appel-

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18. *Id.*

19. *See* ILL. COMP. STAT. 5/2-1005 (1992) (ILL. REV. STAT. ch. 110, para. 1005 (1991)); ILL. S. CT. RULE 192 (1984) (ILL. REV. STAT. ch. 110A, para. 192 (1991)) (governing summary judgments when multiple issues or pretrial summary judgments are involved).

20. Reidelberger v. Highland Body Shop, Inc., 83 Ill. 2d 545, 550, 416 N.E.2d 268, 271 (1981) (stating that a trial court abuses its discretion when an unclear motion *in limine* is granted).

21. Lockett v. Bi-State Transit Auth., 94 Ill. 2d 66, 76, 445 N.E.2d 310, 315 (1983) (quoting *Reidelberger*, 83 Ill. 2d at 550, 416 N.E.2d at 271).

22. *Id.* at 75-76, 445 N.E.2d at 315.

23. *Id.* at 75, 445 N.E.2d at 315.

late court, ruling that there is a specificity requirement for *in limine* motions and orders, which, in this case, was not satisfied.[24]

The court in *Crawford County State Bank v. Grady* suggests that the movant may satisfy the specificity requirement by including, along with the motion, a proposed order clearly and specifically outlining the questions or evidence at issue.[25] The order may expressly admit or exclude evidence. However, the order is interlocutory and may be modified by the court during the trial.[26] Alternatively, the order may simply define the procedures to be followed if or when the issue is raised at trial. For example, in *Beasley v. Huffman* the court ordered counsel for the defendant not to raise the issue of contributory negligence by the minor plaintiff, but authorized counsel to approach the bench if at trial it appeared that matters of contributory negligence were intermixed in plaintiff's case.[27]

In *Nolan v. Elliott*,[28] a personal injury action, the trial court issued an order *in limine* which "provided that defendants were not allowed to 'mention, refer to, interrogate concerning . . . the pecuniary circumstances of the family of plaintiff Jane Nolan.' "[29] On appeal, plaintiff contended that defendants violated the order *in limine* by referring to plaintiff's father, an attorney, and by mentioning the existence of an insurance policy. The Illinois Appellate Court for the Second District found that neither of the defendant's actions violated the order *in limine*.[30] The court found that the defendant's mention that the plaintiff's father was an attorney did not disclose the financial situation of the plaintiff's family, and therefore did not violate the order.[31] As to the mention of insurance, the court held that the trial court did not abuse its discretion by refusing to declare a mistrial because the reference to insurance was unintentional and did not prejudice the plaintiff's case.[32]

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24. *Id.* at 76-77, 445 N.E.2d at 315-16.

25. *See* Crawford County State Bank v. Grady, 161 Ill. App. 3d 332, 341, 514 N.E.2d 532, 538 (4th Dist. 1987) (affirming the trial court on grounds, *inter alia*, that the order *in limine* lacked the requisite specificity).

26. Beasley v. Huffman Mfg. Co., 97 Ill. App. 3d 1, 5, 422 N.E.2d 241, 244 (3d Dist. 1981).

27. *Id.* at 4, 422 N.E.2d at 243.

28. Nolan v. Elliott, 179 Ill. App. 3d 1077, 535 N.E.2d 1053 (2d Dist. 1989), *appeal denied*, 127 Ill. 2d 560, 541 N.E.2d 1108 (1989). Plaintiff was the driver of an automobile which struck an ambulance upon entering an intersection. *Id.* at 1080, 535 N.E.2d at 1055. Nolan brought this personal injury action against the ambulance driver and his employer. *Id.* at 1079-80, 535 N.E.2d at 1055.

29. *Id.* at 1088, 535 N.E.2d at 1060.

30. *Id.*

31. *Id.*

32. *Id.* at 1088, 535 N.E.2d at 1060-61 (emphasizing that not all references to an insurance company will result in a mistrial).

IV. THE MOTION *IN LIMINE* RULING

There are no prescribed procedures for presenting the motion *in limine*. Indeed, there are no specific guidelines for conducting a hearing on a motion *in limine*.[33] A hearing on the motion *in limine* "generally consists of representations by counsel, reference to sworn answers to interrogatories, statements of witnesses, deposition testimony or formal offers [of proof] through witnesses."[34] However, general principles of the litigation process provide some guidelines for ruling on the motion.[35]

A. A Court May Grant, Deny or Delay Ruling on the Motion

A trial court has broad discretion in deciding whether it will entertain a motion *in limine*.[36] It may grant or deny the motion.[37] If the court decides to rule, it must balance the risks of allowing or excluding the evidence to decide whether its ruling increases or decreases the risk of harm at trial.[38] In making its ruling, the court may set the terms and conditions under which the evidence may be excluded or admitted. Therefore, a movant should request and present arguments for the terms and conditions which are most favorable to his or her client. The court, for various reasons, may postpone ruling on a motion *in limine*. First, the court may decide it lacks sufficient facts on which to rule. The court may believe it should delay ruling because it is unable to predict the course of and the effect of its ruling on the trial. Despite thorough investigation and discovery, it is impossible for one to know exactly how a trial will proceed or how the facts will develop.[39] Therefore, if the judge

33. Jerome Lerner, *The Motion In Limine: A Useful Trial Tool*, 4 TRIAL DIPL. J. 14, 17 (1981) (discussing the various ways for an attorney to demonstrate the necessity of a motion *in limine* at the motion hearing).

34. *Id.*

35. Bell v. City of Joliet, 83 Ill. App. 3d 103, 104-05, 403 N.E.2d 740, 741-42 (3d Dist. 1980) (stating that the rules of evidence determine whether the trial court should grant a motion *in limine*).

36. *See* Mack v. First Sec. Bank of Chicago, 158 Ill. App. 3d 497, 504, 511 N.E.2d 714, 719 (1st Dist. 1987) (stating that the trial court may grant a motion *in limine* where the prejudicial effect of admission outweighs the probative value of the evidence); Lundell v. Citrano, 129 Ill. App. 3d 390, 396, 472 N.E.2d 541, 545 (1st Dist. 1984) (stating that the trial court may grant a motion *in limine* where the prejudicial impact results from asking questions and objecting to those questions in the presence of the jury).

37. *See* Cook v. Gould, 109 Ill. App. 3d 311, 315, 440 N.E.2d 448, 450 (3d Dist. 1982) (stating that the trial court has the discretion to grant or deny the motion *in limine*).

38. *Id.* at 315, 440 N.E.2d at 450-51 (concluding that the trial court did not abuse its discretion in granting the motion *in limine* because the trial was simplified and unprejudiced as a result).

39. Bradley v. Caterpillar Tractor Co., 75 Ill. App. 3d 890, 900, 394 N.E.2d 825, 833 (5th Dist. 1979) (quoting Lewis v. Vista Mut. Ins. Ass'n, 183 N.W. 2d 198, 201 (Iowa 1971)).

hearing the motion is not the trial judge, he may find it necessary to leave the decision to the discretion of the trial judge.

B. The Court's Ruling

In ruling, the court must weigh any possible difficulties that the motion could cause against the prejudice that it could avoid.[40] The court should deny a motion *in limine* when it requests an exclusionary order that makes it difficult for a party, despite their sincere efforts, to comply.[41] A movant whose motion is denied must then object to the specific evidence when it is offered at trial.[42] The objection may be made outside the presence of the jury and may be a continuing one.[43]

The court may exercise its discretion by postponing its ruling if it believes that the development of evidence will supply a clarification of the issues at trial.[44] Because it is an interlocutory order, a court may reconsider the order during the trial.[45] However, if the court reserves its ruling on the order, it must then determine whether it will allow any mention of the subject matter during the voir dire process and the opening statement.[46] When the court reserves its ruling, it must also consider the possible prejudice involved in granting the motion later in the trial.[47] If the court enters an exclusionary *in limine* order, the proponent should make an offer of proof regarding the evidence excluded.[48]

In ruling on a motion *in limine*, the court must be satisfied it has enough information to make an informed ruling.[49] It is up to the movant to provide the court with an adequate basis to make an informed ruling.[50] However, a court should not require a party to try a case twice, once outside the presence of the jury to satisfy the trial court of the motion's sufficiency and a second time before the

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40. Lerner, *supra* note 34, at 17.

41. Department of Pub. Works & Bldgs. v. Roehrig, 45 Ill. App. 3d 189, 195, 359 N.E.2d 752, 759 (5th Dist. 1977) (stating that a motion *in limine* should be denied when difficulties with compliance outweigh possible prejudice).

42. Romanek-Golub & Co. v. Anvan Hotel Corp., 168 Ill. App. 3d 1031, 1040, 522 N.E.2d 1341, 1347 (1st Dist. 1988).

43. *Id.* at 1040, 522 N.E.2d at 1348.

44. *Id.* at 1040, 522 N.E.2d at 1347; Crawford County State Bank v. Grady, 161 Ill. App. 3d 332, 341, 514 N.E.2d 532, 538 (4th Dist. 1987); Beasley v. Huffman Mfg. Co., 97 Ill. App. 3d 1, 5, 422 N.E.2d 241, 244 (3d Dist. 1981).

45. *See* Romanek-Golub & Co. v. Anvan Hotel Corp., 168 Ill. App. 3d 1031, 1040, 522 N.E.2d 1341, 1347 (1st Dist. 1988).

46. *Id.*

47. Lerner, *supra* note 34, at 17.

48. Young v. City of Centreville, 169 Ill. App. 3d 166, 176, 523 N.E.2d 621, 628 (5th Dist. 1988) (finding that defendant's failure to make an offer of proof resulted in a waiver of the issue on appeal).

49. Learner, *supra* note 34, at 16.

50. *Id.*

jury.[51] Furthermore, a motion *in limine* should not be a mere substitute or continuation of discovery.[52] Preferably, the facts needed for the motion should be developed during discovery for use in the motion.

V. ENFORCING AN *IN LIMINE* ORDER

Parties use a motion *in limine* to obtain a pretrial order as to the admissibility of evidence to avoid raising the issue before the jury. If the order admits evidence, the opponent should object to the admitted evidence when it is offered. The objection should be made out of the presence of the jury and should be a continuing objection. If the order seeks to exclude evidence, the proponent of the evidence should make an offer of proof out of the presence of the jury.[53] However, if a party disregards an exclusionary order by raising the issue before the jury, the opponent of the evidence must object, making his objection a continuing one if necessary, or waive the error.[54]

If a violation occurs and the movant properly objects, the court may grant the movant relief and may sanction the offending attorney for the violation.[55] The court may also grant a mistrial or new trial.[56] In order for the violation of an *in limine* order to be the

51. Bradley v. Caterpillar Tractor Co., 75 Ill. App. 3d 890, 900, 394 N.E.2d 825, 833 (5th Dist. 1979) (stating that the efficacy of extensive motions *in limine* in bench trials is questionable).

52. *See* Learner, *supra* note 34, at 16 (discussing the possibility of requesting a motion *in limine* during discovery, but cautioning that later discovery could result in a different ruling on the admissibility of the evidence).

53. Young v. Centreville, 169 Ill. App. 3d 166, 176, 523 N.E.2d 621, 628 (5th Dist. 1988).

54. Casey v. Baseden, 111 Ill. 2d. 341, 349, 490 N.E.2d 4, 7-8, (1986); Beasley v. Huffman Mfg. Co., 97 Ill. App. 3d 1, 5, 422 N.E.2d 241, 244 (3d Dist. 1981).

55. *See* Brown v. Bozorgi, 234 Ill. App. 3d 972, 977, 602 N.E.2d 48, 51 (1st Dist. 1992) (finding that the trial court cured any prejudice that resulted from a violation of the order *in limine* by sustaining the objection and directing the jury to disregard the remarks); People v. Graves, 74 Ill. 2d 279, 285, 384 N.E.2d 1311, 1314 (1979) (affirming a summary conviction of contempt against an attorney who violated an order *in limine*); People v. Bernard, 75 Ill. App. 3d 786, 790, 394 N.E.2d 819, 823 (5th Dist. 1979) (finding that the court's *in limine* order must be specific to sustain a contempt citation for violation of the order).

56. *See* People v. Boaz, 222 Ill. App. 3d 363, 366, 583 N.E.2d 714, 716 (5th Dist. 1991) (finding that a violation of an order *in limine* does not warrant a new trial where the violation does not affect the result); Ross v. Aryan Int'l, Inc., 219 Ill. App. 3d 634, 643, 580 N.E.2d 937, 942 (1st Dist. 1991) (finding that the trial court did not abuse its discretion when it failed to declare a mistrial where it gave a cautionary instruction to the jury); Healy v. Bearco Management, Inc., 216 Ill. App. 3d 945, 960, 576 N.E.2d 1195, 1207 (2d Dist. 1991) (finding that the trial court did not err in refusing to grant a mistrial for an alleged violation of an order *in limine* because the violation was not sufficiently prejudicial to warrant a mistrial); Northern Trust Bank v. Carl, 200 Ill. App. 3d 773, 778, 558 N.E.2d 451, 456 (1st Dist. 1990) (stating that a violation of an order *in limine* will result in a new trial where the order was specific, the violation was

basis for a new trial, the order must be specific and the violation clear and prejudicial.[57] The trial courts possess broad discretion to grant a new trial.[58]

In addition, the court may sanction an attorney who violates an *in limine* order. First, the court may find an attorney who violates an *in limine* order in contempt. The Illinois Supreme Court, in *People v. Graves*, upheld a conviction of counsel for contempt finding that "[w]hen certain matters are withdrawn from the consideration of the jury, counsel may not, through question or comment, expose the jury to the very matters withdrawn from its consideration."[59] Next, the court may refer the attorney for discipline. In *Blair v. Blondis*, the court recognized that defense counsel, through questioning, clearly violated the trial court's order granting plaintiff's motion *in limine*. The court then warned that defense counsel's behavior was unjustifiable and was almost a violation of the Code of Professional Responsibility Rule 3.3(a)(9).[60] Rule 3.3(a)(9) governs trial conduct and states that "[in] appearing in his professional capacity before a tribunal, a lawyer shall not . . . intentionally degrade a witness or other person by stating or alluding to personal facts concerning that person which are not relevant to the case."[61]

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clear, and the violation resulted in prejudice sufficient to deny the party a fair trial).

57. Brown v. Bozorgi, 234 Ill. App. 3d 972, 976, 602 N.E.2d 48, 50 (1st Dist. 1992) (finding that defendant's closing arguments in an action for wrongful death did not violate an *in limine* order prohibiting comments relating to plaintiff's settlement agreement because there was no clear violation of the order); Tomanszewski v. Godbole, 174 Ill. App. 3d 629, 634, 529 N.E.2d 260, 264 (3d Dist. 1988) (finding that the plaintiffs in a medical malpractice action were not so prejudiced by an alleged violation of an order *in limine* to entitle them to a mistrial); *In re* Estate of Loesch, 134 Ill. App. 3d 766, 770, 481 N.E.2d 32, 35 (1st Dist. 1985) (holding that a new trial was not warranted on appeal for the setting aside of a will because the petitioner's violation of an order *in limine* barring reference to the incompetency proceeding resulted in only harmless error); People v. Bernard, 75 Ill. App. 3d 786, 790, 394 N.E.2d 819, 823 (5th Dist. 1979) (holding that even if the defense attorney's question in a personal injury action concerning plaintiff's prior treatment violated an order *in limine*, the lack of clarity and specificity, and the overbreadth of the order prohibits a finding of contempt).

58. Marotta v. General Motors Corp., 108 Ill. 2d 168, 177, 483 N.E.2d 503, 506 (1985) (explaining in an action based on the Federal Employers' Liability Act that it is up to a trial judge's discretion to grant a new trial and, absent a clear abuse of that discretion, the decision should not be disturbed). *Compare* Reidelberger v. Highland, 83 Ill. 2d 545, 548, 416 N.E.2d 268, 270 (1981) (holding that the trial judge's granting of a new trial due to only a perceived violation of an *in limine* order was an abuse of discretion).

59. People v. Graves, 74 Ill. 2d 279, 283, 384 N.E.2d 1311, 1314 (1979) (explaining that a summary conviction of contempt is not a denial of due process).

60. Blair v. Blondis, 160 Ill. App. 3d 184, 190, 513 N.E.2d 157, 160 (3d Dist. 1987) (dictum) ILL. RULES PROF. CONDUCT 3.3(a)(9) (1990) (ILL. REV. STAT. ch. 110A, Rule 3.3(a)(9) (1991)).

61. ILL. S. CT. RULE 301 (1984) (ILL. REV. STAT. ch. 110A, Rule 3.3(a)(9) (1991)).

Finally, excess costs of litigation that occur because of a violation of an *in limine* order may be recovered. "In Illinois, one who commits a wrongful act is liable for all the ordinary and natural consequences of his act."[62]

VI. APPELLATE REVIEW

A party who suffers harm as a result of an *in limine* ruling may appeal. Because rulings on motions *in limine* are interlocutory, review must ordinarily await final judgment.[63] However, a party may seek immediate review under Illinois Supreme Court Rule 304 if the *in limine* order excludes an entire claim or defense and the court expressly finds "there is no just reason for delaying enforcement or appeal."[64] A party also may seek immediate review under Illinois Supreme Court Rule 308 if the court finds "there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation."[65]

In order to preserve the issue for review, a party who suffers harm as a result of an *in limine* ruling must take the appropriate steps at trial. If the order excludes evidence, the proponent of the evidence must make a proper offer of proof.[66] If the order admits evidence or a party violates an exclusionary order, the opponent of the evidence must object and make his objection a continuous one if necessary.

The standard of review will depend on the ruling *in limine*. If the order excludes evidence because it is irrelevant, the standard of review would correctly be a *de novo* review of a question of law.[67] If the order excludes relevant evidence because its prejudicial effect outweighs its probative value, the standard of review should inquire as to any abuse of discretion on the part of the trial court.[68] For example, while addressing the admissibility of photographic evi-

62. Harvey v. Carponelli, 117 Ill. App. 3d 448, 454, 453 N.E.2d 820, 825 (1st Dist. 1983) (discussing the award of attorney fees to the defendant as a result of the plaintiff's deliberate improper conduct).

63. ILL. S. CT. RULE 301 (1984) (ILL. REV. STAT. ch. 110A, para. 301 (1991)).

64. ILL. S. CT. RULE 304(a) (1984) (ILL. REV. STAT. ch. 110A, para. 304(a) (1991)).

65. ILL. S. CT. RULE 308(a) (1984) (ILL. REV. STAT. ch. 110A, para. 308(a) (1991)).

66. Young v. City of Centreville, 169 Ill. App. 3d 166, 176, 523 N.E.2d 621, 628 (5th Dist. 1988).

67. *See* Schaffner v. Chicago & N.W. Transp. Co., 129 Ill. 2d 1, 541 N.E.2d 643 (1989) (action against railroad and bicycle manufacturer brought by bicyclist for injuries sustained while crossing railroad tracks in which multiple rulings by trial judge concerning motions *in limine* were held to have been properly sustained and not an abuse of discretion).

68. *Id.* at 18, 541 N.E.2d at 650.

dence, the Supreme Court of Illinois recently reinforced the long recognized proposition that the decision whether to admit or exclude evidence or exhibits is reserved to the discretion of the trial judge.[69]

VII. CONCLUSION

The motion *in limine* serves a useful function to both save trial time and increase the quality of the trial. However, the motion suffers from substantial flaws if injudiciously used or entertained. First, motions *in limine* may become a means of "last minute discovery" that may skew or disrupt, rather than expedite the litigation. Similar to pretrial orders under Illinois Supreme Court Rule 218, motions *in limine* may burden the court with extensive pretrial rulings, particularly in cases involving expert witnesses under Illinois Supreme Court Rule 220. Thus, time saved at trial may be spent, or even over-spent, with pretrial hearings. Further, absolute rulings admitting or excluding evidence in complex cases before the evidence fully develops at trial may be detrimental to the factfinding process. This problem is compounded if the order *in limine* is not clear as to the evidence to be admitted or excluded and any process to be followed regarding that evidence. Finally, where an order precludes an entire claim or defense, the order *in limine* may, in essence, result in a partial or complete summary judgment or directed verdict without the procedural safeguards associated with those orders. Thus, the ultimate value of *in limine* orders in modern litigation rests with the trial judge who must exercise sound discretion subject to limited appellate review in dealing with motions *in limine*.

69. *Id.*