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The supervisory authority of the Supreme Court of Illinois: A powerful tool for the court and practitioner alike

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The Constitution of the State of Illinois broadly declares that "[g]eneral administrative and supervisory authority over all courts is vested in the Supreme Court."[1] Illinois Supreme Court Rule 383 provides the requirements for a motion for supervisory order. Essentially, the Rule describes how Illinois practitioners may request, by motion, that the Supreme Court invoke its supervisory authority.

Even before Rule 383's codification in 1983, the supervisory order had been, since the adoption of the 1970 Constitution, an important tool by which the court had asserted its control over proceedings throughout Illinois' appellate and circuit courts. A supervisory order is not simply an important and effective tool for the court. Seeking such an order, when appropriate, can pay great dividends for practitioners—and thus their client, as well.

This article discusses Rule 383, examines its importance and use by practitioners, and, finally, suggests that a request for supervisory order should be considered by practitioners at all critical stages of litigation in Illinois. Motions for supervisory order are rarely granted, yet they have been used successfully at every stage of litigation in Illinois. In the final analysis, a motion or request for supervisory order can be a successful avenue to Supreme Court relief.

Rule 383 and the Standards the Court Utilizes in Considering Motions for Supervisory Order

Rule 383 provides, at its most basic, that "[a] motion requesting the exercise of the Supreme Court's supervisory authority shall be supported by explanatory suggestions and shall contain or have attached to it the lower court records or other pertinent material that will fully present the issues."[2] After stating the requirements for service, the Rule provides a relatively expedited period for objection—seven days when service of the motion is made by facsimile or 14 days when service is accomplished by mail or commercial carrier.[3] Additionally, the Rule allows oral argument at the discretion of the court.[4]

An examination of situations where the court has utilized its supervisory order authority provides insight into the rule's broad potential in litigation. In *People ex rel. Daley v. Suria*, a case which has not been overruled or even questioned, the Supreme Court affirmed the breadth of its supervisory authority, stating that "we may, under our supervisory order, require a trial court to vacate orders entered in excess of its authority *or* as an abuse of discretionary authority."[5] Although the Suria decision specifically references the trial court, supervisory orders are most often used to direct some action in the appellate court.[6]

Interestingly, the formulation of the standard for supervisory orders in Suria is very broad. Suria provides that a supervisory order may be granted in any situation where a trial or appellate court acted in excess of its authority *or* abused its discretionary authority.[7] In other words, the two situations described are independent and require no other finding. This formulation is not surprising considering that the court's supervisory authority is derived from the very expansive Illinois Constitutional provision described above.

Some decisions discussing the contours of the court's supervisory authority are not so expansive. The court has repeatedly noted, for example, that supervisory orders will be granted only in limited circumstances.[8] Additionally, the court has stated that "[a] s a general rule, [the Court] will not issue a supervisory order unless the normal appellate process will not afford adequate relief *and* the dispute involves a matter important to the administration of justice or intervention is necessary to keep an inferior tribunal from acting beyond the scope of its authority."[9] While these statements suggest that a supervisory order will not issue unless the case involved presents a situation where "the normal appellate process will not afford adequate relief," recent case law suggests the continued validity of the broader Suria rule.

In *Philip Morris, USA, Inc. v. Byron*, 226 Ill.2d 416 (2007), albeit in dissent, Justice Freeman, joined by now Chief Justice Kilbride, stated that "[g]enerally this court will not issue a supervisory order absent a finding that (i) the normal appellate process will not afford adequate relief, (ii) the dispute involves a matter important to the administration of justice, *or* (iii) our intervention is necessary in order to prevent an inferior tribunal from acting beyond the scope of its authority."[10] Justice Freeman and Chief Justice Kilbride thus appear to have treated the lack of adequate appellate relief situation as an alternative basis for granting a supervisory order rather than simply a factor modifying the other two bases for granting such an order. This expanded formulation of the supervisory order stan-

dard is a logical extension given the Rule's constitutional underpinnings. After all, as noted above, the Illinois Constitution states that "supervisory authority over all courts is vested in the Supreme Court" without any reference to the normal appellate process.[11]

As the foregoing analysis reveals, the court has absolute authority to act when it feels so compelled. Moreover, the instances where the Supreme Court has issued supervisory orders are so eclectic that diligent litigators should consider it a tool to achieve timely relief in critical situations.

The Supreme Court of Illinois Issues Supervisory Orders with Some Frequency

Paging through the Supreme Court's petition for leave to appeal dispositions, a careful reader cannot help but notice the number of supervisory orders issued. In many of these cases, the parties involved may not have even asked for such an order. In fact, because the only codified method for requesting a supervisory order is by motion pursuant to Rule 383, it is suggested that few of the supervisory orders granted as part of the court's petition for leave to appeal docket were granted after a formal rule-compliant request. Nevertheless, the Supreme Court generally issues more supervisory orders through its petition for leave to appeal docket than it allows petitions for full consideration. Statistics published on the court's Web site verify this fact and indicate that the issuance of supervisory orders is marked by a very generous breadth in subject matter.

Each year, the Administrative Office of the Illinois Courts provides an Annual Report and Statistical Summary to give an overview of the Illinois judicial system and its programs, services, workload, and funding.[12] Included in this overview is a statistical breakdown of the Supreme Court's activities. In 2009, for example, the court reported that it allowed 87 petitions for leave to appeal, denied, dismissed, or had withdrawn 1,594 petitions, and denied with supervisory order another 95 petitions. In other words, the court issued supervisory orders with respect to more petitions for leave to appeal than it allowed. This trend held true in 2007 (105 petitions allowed and 173 denied with supervisory order) and 2005 (88 petitions allowed and 105 denied with supervisory order). In 2006, the exact same number of petitions were allowed—76—as were denied with supervisory order. In 2008 and 2004, by contrast, more petitions were allowed than denied with supervisory order.[13]

In three of the six years between 2004 and 2009, the court thus issued more supervisory orders in its petition for leave to appeal docket than it allowed. The opposite was true in two years—2008 and 2004—and the same number were allowed as were denied with supervisory order in one—2006. Considering this six-year period as a whole, 562 petitions for leave to appeal were allowed while 572 petitions were denied with supervisory order. Hence, the supervisory order is an important and well-used tool for the court with respect to its petition for leave to appeal docket.

While the court's statistics do not mention how many petitions formally asked for a supervisory order in the alternative to full consideration, it is suggested that many did not. Because of the court's willingness to grant such orders, however, appellate litigators should consider requesting such relief in their petitions for leave to appeal. Doing so may double the chances of actually obtaining the court's involvement in a particular matter. It must be recognized, however, that because the Rule 383 motion is the only method available to formally and officially request a supervisory order, practitioners who feel that such relief is their only real chance for obtaining Supreme Court involvement should file a separate Rule 383 motion in addition to their petition for leave to appeal.[14]

The importance of the supervisory order is further confirmed when one considers original motions expressly filed pursuant to Rule 383 in comparison to original actions for mandamus filed pursuant to Rule 381. While Rule 381 references original Illinois Supreme Court actions other than mandamus—actions for prohibition or habeas corpus, for example—a comparison between actions for mandamus and motions for supervisory order appears most apt as both requests for relief generally seek the direction by the Supreme Court of some specific act.

Turning to the statistics, from the period between January 1, 2005 to December 31, 2009, 338 original mandamus actions were filed with the court and only eight allowed—an allowance rate of just over 2 percent.[15] By contrast, during the same period, 628 motions for supervisory order were filed and 157 allowed—an allowance rate of exactly 25 percent. This difference is startling and, while neither option carries a high rate of success, it is apparent that the Supreme Court is far more likely to grant a supervisory order than it is to grant an original action for mandamus.

As the analysis below will further describe, statistics confirm that it is very difficult to obtain mandamus relief from the Illinois Supreme Court. By the same token, the standards for a motion for supervisory order are more generous, thereby leading to a far higher rate of allowance.

Motions and Requests for Supervisory Order Should Not Be Discounted at All Critical Stages of Litigation in Illinois' Appellate and Circuit Courts

The Comment to Rule 383 specifically states that the Rule "is intended to discourage a practice which has developed since 1971 by which parties petition for leave to file a petition for mandamus or, in the alternative, for a supervisory order, in cases in which mandamus would be an inappropriate remedy."[16] Rule 383 itself thus acknowledges that supervisory relief is available in a broader set of circumstances than mandamus. Case law further recognizes that supervisory relief appears more widely applicable and not as narrowly construed as more traditional equity relief.

Mandamus is an appropriate remedy to compel compliance with *mandatory* legal standards.[17] Accordingly, relief will not be granted when the act in question involves the exercise of an official's discretion.[18] So, while mandamus may lie to compel the performance of a judicial duty where such duty is ministerial and the right is clear, the Supreme Court has repeatedly held that the writ will not lie to direct or modify the exercise of judicial discretion by a judge.[19] Indeed, the court has found that

> [i]t is not the office of the writ of mandamus to review the orders, judgments, or decrees of courts for error in their rendition or to correct, direct, or control the action of a judge in any manner which he has jurisdiction to decide. For mere error, however gross or manifest, the remedy is an appeal or writ of error, and the writ of mandamus will not lie for its correction if the court has jurisdiction of the subject matter and the parties.[20]

Recognizing the exacting standards of a

mandamus action, the Supreme Court has consistently described the writ as an "extraordinary remedy."[21] It has been "referred to as the highest judicial writ known to the law."[22] And while the court has somewhat similarly noted that supervisory orders will be granted only in "limited circumstances," there can be no question that the mandamus standard is far more strict and restrictive. Where mandamus only lies in situations involving "a clear right" and "a clear [non-discretionary or ministerial] duty,"[23] a supervisory order is more broadly appropriate where a court has acted in excess of its authority or abused its discretion.[24]

That supervisory relief is less difficult to obtain than mandamus relief is evident by virtue of several decisions where the Supreme Court declined mandamus at the same time it chose, instead, to generously exercise its supervisory authority.[25] In *Balciunas v. Duff*, 94 Ill.2d 176, 188-89 (1983), for example, the court stated that "[t]he writ of *mandamus* is an extraordinary remedy which should not, under normal circumstances, be used to regulate discovery . . . we therefore exercise our supervisory power and direct that [the trial judge] vacate the March 12 order and proceed accordingly." Likewise, in *Marshall v. Elward*, 78 Ill.2d 366, 375 (1980), the court stated that "[t]he writs of mandamus and prohibition are extraordinary remedies and, under normal circumstances, are not the proper vehicles for the regulation of discovery . . . [I]t is fitting, in this instance, to exercise our supervisory power."[26]

Because the standards for obtaining supervisory relief are less onerous than those involved in requests for mandamus relief and because the court simply appears more willing to grant supervisory relief, practitioners must keep such a motion in mind when faced with a trial or appellate decision entered without authority or in abuse of discretion. At the very least, a request for supervisory order should be considered (and perhaps used as a matter of course) as a suggested, or alternative basis, for relief in motions requesting a writ of mandamus or certain petitions for leave to appeal.

Conclusion

The foregoing analysis should not be read to suggest that a motion for supervisory order is appropriate to remedy any court order with which a litigator disagrees. Drafting and filing a persuasive motion for supervisory order is time-consuming and potentially costly. Moreover, properly attending to such a motion might draw the attention of an attorney away from more pressing and important matters of an ongoing trial or appellate matter. Furthermore, and simply as a practical, if not quantifiable, reality, filing a motion for supervisory order in an ongoing litigation may stand an attorney in lower esteem with the court he or she will most likely be dealing with on a more day-to-day basis. Understandably, an appellate or trial court may not appreciate a flood of extraordinary requests for supervisory relief based upon a perceived fundamental mistake in its handling of a matter.

That being said, Rule 383 motions should be fully considered as an essential means to overturn any court order that cannot be effectively and timely challenged through the normal appellate process, where the dispute involves a matter important to the administration of justice, or Supreme Court intervention is necessary to prevent a trial or appellate court from acting beyond the scope of its authority. The statistics described herein show that such motions have been requested and granted with some regularity over the last five years. In addition, the court may even grant supervisory relief in situations involving matters of discovery or other typically routine matters of pre-trial practice. *See supra* at pg. 8 and n.26.[27] Accordingly, Illinois attorneys should not forget the Rule 383 motion as another important and effective tool for use in their litigation toolbox.

As the above analysis also indicates, suggesting a supervisory order as an alternative to granting a petition for leave to appeal has the potential to significantly increase an appellate practitioner's chances of obtaining some relief or action by the Supreme Court. Filing a motion requesting such relief comes with various costs and risks. Yet, a motion or request for supervisory order also carries the potential for timely and expedited relief. For that reason, Illinois attorneys should maintain a familiarity with the standards and rules by which supervisory relief is granted and be mindful of the reality that the Rule 383 motion can and has led to rapid and prompt Supreme Court involvement in the past. ■

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1. Ill. Const. 1970, art. VI, Sec. 16.
2. Rule 383(a).
3. Rule 383(c).
4. Rule 383(d).
5. 112 Ill.2d 26, 38 (1986) (citing *People ex rel. Ward v. Moran*, 54 Ill.2d 552 (1973); *Doherty v. Caisley*, 104 Ill.2d 72 (1984)) (emphasis added).
6. *People ex rel. Birkett v. Bakalis*, 196 Ill.2d 510, 513 (2001) (citing *People v. Harden*, 191 Ill.2d 545 (2000) (petition for leave to appeal denied but court exercised supervisory authority to vacate the judgment of the appellate court and remand with directions to reconsider its judgment in light of another recent opinion)).
7. *Suria*, 112 Ill.2d at 38.
8. *Bakalis*, 196 Ill.2d at 512; *Delgado v. Board of Election Com'rs of City of Chicago*, 224 Ill. 2d 481, 488-89 (2007) (where the court exercised its supervisory authority despite noting that supervisory orders are generally disfavored).
9. *See e.g. Bakalis*, 196 Ill.2d at 512 (emphasis added and internal citations omitted).
10. 226 Ill.2d at 422 (citation omitted).
11. Ill. Const. 1970, art. VI, Sec. 16.
12. The yearly Annual Report and Statistical Summary of the Illinois Courts may be found on the Supreme Court's website. *See* http://www.state.il.us/court/SupremeCourt/AnnReport.asp, last visited September 27, 2011. The most recent report available pertains to 2009 and the earliest available pertains to 2001. It should be noted, however, that each report contains information for that year as well as four previous years.
13. In 2008, 95 petitions for leave to appeal were allowed and 67 were denied with supervisory order. In 2004, 111 petitions for allowed and 56 were denied with supervisory order.
14. Recently, the Chicago Daily Law Bulletin published an article noting that respondents in one high-profile case moved to strike a petition for leave to appeal before the Illinois Supreme Court because the petitioners asked for some appellate relief and some supervisory relief. *See "*Peterson hopes to get sealed PLA Dismissed," Yeagle, Patrick, *Chicago Daily Law Bulletin*, Aug. 31, 2011. Notably, the article quoted Michael T. Reagan, an appellate litigator who frequently appears before the court, who stated that asking for supervisory relief at the end of a petition for leave to appeal is "not unusual" but "[b]est practice is to file a separate motion for supervisory authority." *Id*. On September 19, 2011, the court issued an order with respect to the above-described motion to strike, ordering, on its own motion, that "the motion by respondent to strike the petition for leave to appeal is taken with the petition for leave to appeal." *See* 9/19/2011 Order, Illinois Supreme Court, Case No. 112875. On November 30, 2011, the court denied the petition for leave to appeal in the matter while at the same time entering a supervisory order. (*See* 11/30/2011 Petition for Leave to Appeal Dispositions, *People v. Peterson*, Case No. 112875. Thus, in that case, the appellant's dual request for leave to appeal and a supervisory order paid great dividends.
15. While the Supreme Court does not routinely maintain statistics specifically and separately setting forth the number of mandamus motions filed and allowed or the number of supervisory orders filed and allowed, the Office of the Clerk of the Illinois Supreme Court graciously compiled and provided such information at the author's request for the purposes of this article.

16. Rule 383 (comments).

17. *People ex rel. Birkett v. Konetski*, 233 Ill.2d 185, 192-93 (2009) ("*Mandamus* relief will not be granted unless the petitioner shows a clear right to the requested relief, a clear duty of the public officer to act, and clear authority of the public officer to comply with the order." (emphasis in original)).

18. *People ex rel. Devine v. Sharkey*, 221 Ill.2d 613, 616-17 (2006).

19. *People ex rel. Dolan v. Dusher*, 411 Ill. 535, 538 (1952); *People ex rel. Elliott v. Juergens*, 407 Ill. 391, 400 (1950); *People ex rel. Barrett v. Shurtleff*, 353 Ill. 248, 260 (1933).

20. *People ex rel. Atchison, T. & S. Ry. Co. v. Clark*, 12 Ill.2d 515, 520 (1957).

21. *Lewis E. v. Spagnolo*, 186 Ill.2d 198, 231 (1999) (quoting *Madden v. Cronson*, 114 Ill.2d 504, 514 (1986).

22. *Dusher*, 411 Ill. at 538.

23. *Noyola v. Bd. Of Educ. Of the City of Chicago*, 179 Ill.2d 121, 133 (1997); *Dusher*, 411 Ill. at 538.

24. *Suria*, 112 Ill.2d at 38.

25. *See People v. Rosetti*, 348 Ill. Dec. 841 (2011); *Philip Morris USA, Inc.*, 226 Ill.2d at 416.

26. *See also* "Appeal of Pretrial Discovery Orders in Illinois," Knight, Charles D., Ill. Bar Journal, Vol. 98, No. 12 at 634 (Dec. 2010) (discussing requests for a writ of mandamus or a supervisory order as a means to upset pretrial discovery orders, citing *Balciunas* and *Elward* as situations where a writ of mandamus was denied but a supervisory order granted, and noting that "in an extraordinary case, you might get relief from a trial court's discovery by petitioning the Illinois Supreme Court for a writ of mandamus with an alternative request for a supervisory order. Although the writ will probably be denied, the supreme court might exercise its supervisory authority to direct the trial court to vacate, modify, or reconsider the discovery order.").

27. *See also People ex rel. Bowman v. Woodward*, 61 Ill.2d 231, 232 (1974) (entering supervisory order to vacate a trial court order that directed that certain grand jury testimony be transcribed).