

# Chicago Daily Law Bulletin®

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LAW BULLETIN MEDIA

## LAWYERS' FORUM



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## Stagnant case orders skyrocket

*This is Part One of a two-part series. Part Two covers the legal implications of a DWP order.*

Those with decades of professional experience in the Circuit Court of Cook County Law Division know this is a period of unprecedented stress and work overload. Lawyers and trial judges are being pushed to their limits to serve the public after the upheavals of the pandemic.

Despite the challenges, the performance of the Law Division has been impressive. According to statistics cited by the late presiding judge James Flannery, Jr., 336 cases went to verdict in the Cook County Law Division in 2019 under 27 judges. In 2022, 300 cases were tried to a jury's verdict even though the number of trial judges had decreased to 17. (The pool of judges has

recently been replenished.)

It may come as a shock, then, that the number of cases dismissed for a purported lack of effort or progress has skyrocketed.

When a judge determines that a case has become stagnant due to lack of activity or failure to comply with deadlines, a dismissal for want of prosecution (DWP) may be entered. Statistics generated by the Law Division reflect that 1,889 cases were DWP'd in 2022, as were 2,340 cases in 2023.

Through April 30 of this year, 1,085 DWPs have been entered. At this rate, 3,255 cases could be DWP'd in the Cook County Law Division by year's end. This would reflect a 72% increase from 2022.

What explains this paradox? If the DWPs are justified, this would indicate that lawyers are neglecting cases in record numbers. But lawyers' reports and Circuit Court of Cook County data demonstrate that attorneys and judges are working zealously to reduce backlog.

In July 2022, the Illinois Supreme Court implemented Time Standards for Case Closure in the Illinois Trial Courts to improve the delivery of judicial services. Notably, this coincided with the upward trend in DWPs.

For cases filed on or after Jan. 1, 2022, the standards require that 75% of Law Division cases should be closed within 18 months, 90% within 24 months, and 98% within 36 months.

The time standards are uniform statewide, but the Cook County Law Division has a far greater volume of complex cases like medical negligence actions. Because complex cases are likely to require 36 months or more for completion, the standards are more burdensome in Cook County than elsewhere.

One possible explanation for the spike in DWP orders in Cook County is that, with "timely" case closure as the goal, lawyers are being ordered to do the impossible. Some case management deadlines may be unrealistic and counterproductive to the legal system's interest in the efficient administration of justice. DWPs may be proof that when too much is demanded, something's "gotta give."

Another possibility: The Law Division is using DWP orders to close cases.

The time standards provide that a case is "closed" by entry of the final order as prescribed by the 2022 Manual on Recordkeeping (MRK). But the MRK's treatment of a DWP as a final order is inconsistent with such an order's legal effect.

Under the law, a DWP is a non-final, interlocutory order (*S.C. Vaughan Oil Co. v. Caldwell, Troutt & Alexander*, 181 Ill. 2d 489, 507 (1998).) Following the entry of a DWP order, the dismissed case can be refiled within one year or within the remaining period of limitation, whichever is

greater. 735 ILCS 5/13-217.

So in reality, the action is not closed, but delayed, because a DWP'd case is almost always reinstated by motion or refiled as a new case on a new clock with a new number.

Treating a DWP'd case as closed for reporting purposes may help the court show compliance with time standards, but it does not accurately reflect the legal end of the case. (In 2022, the last year Cook County data was available, the Illinois Courts Annual Report noted, "Due to changes in Cook county's case management system, there are large variances in the number of cases being reported as filed, closed, and open between 2022 and prior years.")

Whether or not these explanations correctly identify the cause of the increase in DWP orders in the Law Division or simply show an interesting correlation, there can be little doubt that the increase is real. And it is detrimental to the desired operational efficiency of the court.

A DWP order increases the length of time before a case reaches final disposition. It also adds to litigation costs. A motion to vacate a DWP order may require payment of a reinstatement fee. If the case is not reinstated by motion, the plaintiff must refile the case to obtain a disposition on the merits. New filing fees are charged, adding hundreds of dollars

to the cost of pursuing one's legal rights.

As Cook County strives to meet case closure benchmarks, there is less room for discretion in the management of cases — especially the most complex ones. There is less tolerance for unavoidable delays and less recuperative downtime for lawyers and judges between

trials. In the current environment, there is more urgency, more anxiety, more mental and physical health stressors, and more DWPs.

The time standards were launched with laudable goals in mind. Appellate Court Justice Ann B. Jorgensen, acting as chair of the Court Data & Performance Measures Task Force,

said the implementation of statewide time standards “represents a new day in our pursuit of full and fair resolutions in a timely and efficient manner in every court.”

Now it is time to evaluate the efficacy of this new management tool to consider if it has unintended consequences that impede the fair

and efficient delivery of judicial services.

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## Remedies can't cure dismissals

*This is Part 2 of a two-part series. Part 1 appeared Tuesday.*

As I wrote in Part I, the Cook County Law Division is experiencing a surge in the number of dismissals for want of prosecution (DWP's). There is no sign of a slowdown: Data from the Law Division reflects 130 more DWP's were entered in May 2024 than in April 2024.

Although the law offers options to alleviate the effects of a DWP, no complete antidote is available. Overuse of these orders is averse to fairness and the efficient administration of justice.

When a case is DWP'd, Section 13-217 of the Illinois Code of Civil Procedure (the "Code") allows the plaintiff to refile the action within one year of the entry of the order or until the expiration of the applicable statute of

limitations, whichever is longer.

Typically, before a plaintiff refiles the case, he will seek relief by presenting a motion to vacate the DWP and reinstate the case. A motion to reinstate is brought pursuant to Code Section 2-1301(e). A plaintiff need not promptly move for reinstatement; he is allowed the time permitted for re-filing under Section 13-217, plus an additional 30 days. Thus, a plaintiff has at least 395 days to file a motion to vacate, and even more time if the DWP is entered with more than one year remaining in the statute of limitations. See *Galaviz v. Mietus Restoration, Inc.*, 2023 IL App (1st) 220514, ¶30. Filing a motion to vacate tolls Section 13-217's re-filing period. *Bowers v. Village of Palatine*, 204 Ill.App.3d 135, 137-38 (1990).

If the case is reinstated, the proceedings continue as though the DWP had never been entered.

In contrast, a refiled case is deemed a completely distinct action that requires a new case number, a new filing fee and a new summons to issue.

The timeline in *Stacken v. Stratford Moes Inc.*, 2021 IL App (1st) 191982-U demonstrates how a DWP can halt a case's progress for years. There, after the plaintiff's case was DWP'd Dec. 20, 2016, she promptly filed a motion to vacate, but a series of errors in providing proper notice resulted in

postponements. The motion was finally heard and denied 16 months following the entry of the DWP. Plaintiff refiled her case six months later, in December 2018.

The DWP resulted in a two-year delay, but it could have been even longer had the plaintiff waited to file the motion or refile the case.

While a DWP'd case languishes, what's a defendant to do? Inevitably, a defendant suffers prejudice when a case is finally resurrected following a long suspension during which evidence ages and memories fade. The court in *Stacken* said a defendant "is not entirely without recourse," because he can, for instance, urge the court for a hearing on the motion to vacate if it sits dormant for 90 days or more. However, this proposed solution (and others) is inadequate and puts the defendant's attorney in the untenable position of advancing the case brought against his client. Moreover, multiple DWP's can stifle a case's progress repeatedly. A judge may DWP a case and then reinstate it an unlimited number of times.

Fortunately, there are some legal limitations to mitigate DWP-related delays. First, Section 13-217 permits one — and only one — re-filing of a claim even if the statute of limitations had not expired. *Flesner v. Youngs Development Co.*, 145 Ill.2d 252, 254 (1991). Second, when a motion to

vacate is denied, plaintiff may not gain indefinite extensions of the re-filing period by filing motions for reconsideration. *Wilson v. Evanston Hospital*, 276 Ill.App.3d 885, 888 (1995).

Although a plaintiff may want to challenge a DWP as an abuse of the court's discretion, the order is not immediately appealable. The Illinois Supreme Court has held that re-filing "is in fact a more expeditious and less expensive remedy than an appeal." *Flores v. Dugan*, 91 Ill.2d 108, 115 (1982). A DWP constitutes a final and appealable order only after the re-filing period under Section 13-217 expires.

Once it becomes final, to vacate a DWP in the trial court, the plaintiff has the burden of establishing the requirements under Section 2-1401 of the Code: (a) the existence of a meritorious claim or defense; (b) due diligence in presenting the claim or defense to the circuit court in the original action; and (c) due diligence in filing the section 2-1401 petition for relief. The judge's ruling is then appealable pursuant to Illinois Supreme Court Rule 304(b)(3).

Indisputably, some consequences of a DWP cannot be cured by re-filing, including the expenditure of time and money, and the inference of a plaintiff's lawyer's laxity. Given these concerns, and the seemingly unrestrained use of DWP orders, the right to refile may seem

an inadequate alternative to an immediate appeal.

Judges are granted the inherent authority to enter DWPs “to manage the court’s docket and avoid unnecessary burdens on the court and opposing parties.

*Illinois Bone & Joint Institute v. Kime*, 396 Ill. App. 3d 881, 883 (2009).

And yet, as discussed here and in Part I, DWP orders do not promote efficiency or reduce the court’s workload. The results are often

counterproductive, including generating motion practice, delaying resolution on the merits and increasing costs. The rights to reinstate, refile and/or appeal do not allow a complete recovery from a DWP.

While a judge should not ignore or excuse a case’s unjustified stagnation, the authority to DWP should be exercised conservatively. The trend of escalating DWP orders in the Law Division should be reversed.