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# The Vagaries of Illinois Supreme Court Rule 103(b) Revisited

*Robert G. Johnston and Iain D. Johnston*

*Editor's Note: Last year, an article entitled The Vagaries of Rule 103(b) by Robert G. and Iain D. Johnston appeared in the Judicial Conference Symposium issue of the Journal. The title of the article was erroneously shortened without the authors' consent and the article was published without giving the authors an opportunity to update its content. The following brief update has been provided by the authors to correct these oversights.*

Since *The Vagaries of Illinois Supreme Court Rule 103(b)*<sup>1</sup> was first submitted for publication, the Illinois Supreme Court decided two cases discussing application of the rule. In *Segal v. Sacco*,<sup>2</sup> both the appellate<sup>3</sup> and supreme courts found that the trial court abused its discretion in granting defendant's rule 103(b) motion. In its analysis, the supreme court warned that dismissal of a cause of action with prejudice under rule 103(b) is a harsh penalty. That penalty, the court stated, is justified when a delay in service of process denies a defendant a fair opportunity to investigate accessible information upon which liability is predicated.<sup>4</sup> The court in *Segal* determined that the length of delay in service of process did not threaten the trial court's ability to proceed expeditiously to a resolution of the matter before it. Accordingly, the supreme court concluded that granting defendant's rule 103(b) motion was an abuse of the trial court's discretion.<sup>5</sup> The court noted, however, that the length of the delay was not the determinative issue, thereby rejecting the appellate court's analysis in this regard.<sup>6</sup>

In *Womick v. Jackson County Nursing Home*,<sup>7</sup> the supreme

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1. Johnston & Johnston, *The Vagaries of Rule 103(b)*, 21 LOY. U. CHI. L.J. 831 (1990). Although the views expressed therein are those of the authors, they would like to thank the Honorable Thomas E. Hoffman for his assistance with the Article.

2. 136 Ill. 2d 282, 555 N.E.2d 719 (1990).

3. For a discussion of the appellate court's decision, see Johnston & Johnston, *supra* note 1, at 835.

4. *Segal*, 136 Ill. 2d at 288, 555 N.E.2d at 721.

5. *Id.* at 289, 555 N.E.2d at 721.

6. *Id.*

7. 137 Ill. 2d 371, 561 N.E.2d 25 (1990).

court found that plaintiff failed to use reasonable diligence in obtaining service of process. The court explained:

In the present case, we similarly find no evidence of diligence in effectuating service. Womick made no attempt to place summons for a period of almost nine months after the expiration of the statute of limitations, and has offered no explanation for this inactivity. There is no question that he knew how to locate the nursing home: the fact that service was effectuated in only one day reflects the ease with which service of summons could have been had. While it is true that the nursing home had notice of the lawsuit in the present case, that notice is not sufficient to preclude dismissal in light of Womick's obvious lack of diligence.<sup>8</sup>

Thus, actual knowledge, although a factor in determining reasonable diligence, is not determinative under the totality-of-the-circumstances analysis.<sup>9</sup>

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8. *Id.* at 380-81, 561 N.E.2d at 29.

9. *See Johnston & Johnston, supra* note 1, at 841.