



*McNair v. Rush University Medical Center, et al.*, 2016 IL App (1st) 151860-U

On May 16, 2016, the Cray Huber appellate department won a victory on behalf of its client physician when the First District Appellate Court upheld the circuit court's denial of the plaintiff's motion to convert the physician from a respondent in discovery to a defendant. The Appellate Court ruled that the circuit court had no authority to grant extensions past the time period specified in section 2-402 of the Illinois Code of Civil Procedure. Although not precedential, the Rule 23 Order provides sound guidance on the application of the statute governing respondents in discovery. Under the statute, a plaintiff has six months to convert a respondent in discovery to a defendant. The statute allows for one 90-day extension for good cause. After that, a court may grant additional extensions only "for a failure or refusal on the part of the respondent to comply with timely filed discovery."

The plaintiff argued that circuit court had previously granted an extension beyond the statutorily imposed time limit because, at the time of the plaintiff's additional extension request, there was outstanding discovery "as to" the respondent physician. According to the plaintiff, an extension was proper based on the failure of other respondents in discovery to comply with discovery. The Appellate Court rejected that argument and held that the statute specifically stated that a court could grant additional reasonable extensions under the statute only for a failure or refusal on the part of "the respondent" to comply with timely filed discovery. The record revealed that the respondent physician had timely responded to all discovery requests well within the statutory timeframe.