

# 504 and 505 MOTIONS

Rule 504 and 505 have been the subject of conflicting interpretations.

Rule 504 states that an accused's first appearance date shall be not less than 14 days and not more than 60 days from the date of arrest *whenever practicable*.

Supreme Court Rule 504 also provides for a trial on the merits on that first appearance date, if the arresting agency has been exempted from Rule 505. Local Rule 35.06 (b) requires et al. "The arresting officer in a traffic ordinance case shall appear ready for trial on the first court date set, as provided in Supreme Court Rule 504."

Per Local Rule 35.06 ©, on November 18, 1977 by unanimous vote of the Conference of Chief Judges, Supreme Court Rule 505 was deemed inapplicable to the ticket-writing agencies of DuPage County.

Local Rule 35.06 (d) states that both 35.06 (b) and 35.06 © do not apply to State Police cases.

The State Police have, therefore, been exempted from that portion of Supreme Court Rule 504 which provides for a trial on the merits on that first appearance date.

**SUMMARY: All local police departments should be ready for trial on the 1<sup>st</sup> court date. The State Police do not need to be present for the 1<sup>st</sup> date unless the Defendant makes a special request under Rule 505 (see below). The reasoning for this is that the State Police cover a geographically larger area, and it would be cumbersome to have the troopers appear for matters in which the Defendant hasn't specifically requested a trial.**

If a Defendant with a State Police ticket wants a trial on the first court date, then per Rule 505, the Defendant must make a request to the Clerk at least 10 days before the originally scheduled court date. The trooper should be present for trial on this 1<sup>st</sup> date if the Defendant's 505 Motion was properly filed.

Nonetheless, the first appearance date should be set by the Clerk within the 14 to 60 day range for State Police tickets.

Most [504 Motions](#) will be based on the first appearance date having been set PAST the 60<sup>th</sup> day after the date of arrest.

Upon checking the court file you may find correspondence that suggests that the Defendant in fact requested a different date. However, there will probably NOT be an indication of when the original court date was set. Nonetheless, if the Clerk's letter was sent out between the 14<sup>th</sup> and 60<sup>th</sup> day you can presume the original court date would have also fallen within that span.

There will be times when the defendant or his attorney will claim that a new court date was NEVER requested. Unfortunately, there is rarely any proof of such communication from the Defendant. The Clerk's office doesn't include the nature of the communication by Defendant, only a letter that references some sort of request by the Defendant for a new court date.

It will be for you to judge the credibility of a denial by the Defendant of such a request.

Although dismissal is not mandatory under Supreme Court Rule 504, if the return date is not within the time period the State must show it was impracticable to so set it. "Impracticable" is difficult to clearly define. An Assistant State's Attorney may claim that it is beyond their control, or that the Clerk's office puts caps on the number of cases that can be assigned to a certain day. Keep in mind that since the State Trooper doesn't need to be in court on the first date, really any date will suffice despite administrative preferences. Additionally, you

will find that some of your court calls are routinely large, and some are routinely small. You will have to decide if it was impracticable for the matter to have been set within the 14-60 day window.

If you find that it was impracticable for the matter to have been set within the 14-60 day window, the Supreme Court in People v. Ziobro, 242 Ill.2d 34, 949 N.E.2d 631 (2011) held that, even if the trial courts had discretion to dismiss a case due to Rule 504, the discretion is abused if the court fails to require a showing of prejudice to the defendant.

In addition, 625 ILCS 5/16-106.3 states “Erroneous appearance date. In any case alleging a violation of this Code or similar local ordinance which would be chargeable as a misdemeanor, a case shall not be dismissed due to an error by the arresting officer or the clerk of the court, or both, in setting a person’s first appearance date, subject to the right of speedy trial provided under Section 103-5 of the Code of Criminal Procedure of 1963.”

Therefore, if the Defendant is requesting a dismissal per Rule 504 for a misdemeanor offense, 625 ILCS 5/16-106.3 suggests such a motion should be denied.

Should you dismiss a case based upon a 504 Motion, consider using the following ORDER.

**ORDER**

This matter coming on for the Defendant's Motion to Dismiss pursuant to Supreme Court Rule 504, and the Court being fully apprised in the premises finds and orders:

1. The citation was issued by the Illinois State Police.
2. Supreme Court Rule 504 requires the first court appearance to be between 14 to 60 days after the arrest whenever practicable.
3. The Court finds that the section of Rule requiring the first court date to be set with 14 to 60 days is applicable to the Illinois State Police. See People v. Hutson, 360 N.E.2d 548 (1977) and People v. Walter, 779 N.E.2d 1151 (2002).
4. Rule 504's time limitation is directory, not mandatory. People v. Love, 911 N.E.2d 1015 (2009).
5. Although dismissal is not mandatory under Supreme Court Rule 504, if the return date is not within the time period State must show it was impracticable to so set it.
6. In determining if it was practicable to set the first appearance date within the prescribed 14-to 60-day period, the arresting officer's intent is irrelevant. If the trial court determines that it was not impracticable to set the date within the rule's time limitation, the court's dismissal of charges will not be disturbed on review absent an abuse of discretion.
7. There has been a lack of any showing that a correction of the erroneous court date could not have been initiated by the State prior to the date when the period prescribed by Rule 504 expired. People v. Love, 911 N.E.2d 1015 (2009).
8. The Court finds that it was not impracticable to set the matter within the prescribed 14-to 60-day period, per Rule 504.
9. The court finds that the defendant has made a showing of prejudice as a result of the Rule violation. People v. Ziobro, 242 Ill.2d 34, 949 N.E.2d 631 (2011).

WHEREFORE, this matter having NOT been set within 14 and 60 days after the arrest and the State not showing that it was impracticable to so set it, this matter is dismissed without prejudice and with leave to reinstate.

DATE \_\_\_\_\_

\_\_\_\_\_  
Judge