

Proposal 05-05
(P.R. 0139)
Offered by the Supreme Court Rules Committee

Rule 315. Leave to Appeal From the Appellate Court to the Supreme Court

(a) (No changes.)

(b) Time; Contents. Unless a timely petition for rehearing is filed in the Appellate Court, a party seeking leave to appeal must file the petition for leave in the Supreme Court ~~within 21 days after entry of the judgment of the Appellate Court, or within the same 21 days file with the Appellate Court an affidavit of intent or a verification by certification under section 1-109 of the Code of Civil Procedure of intent to file a petition for leave, and file the petition within 35 days after the entry of such judgment. If a timely petition for rehearing is filed, the party seeking review must file the petition for leave to appeal within 21~~ 35 days after the entry of the order denying the petition for rehearing, ~~or within the same 21 days must file with the Appellate Court an affidavit or a section 1-109 certification of intent to file a petition, and file the petition within 35 days after entry of such order. If a petition is granted, the petition for leave to appeal must be filed within 21~~ 35 days of the entry of the judgment on rehearing, ~~or if within the same 21 days an affidavit or a section 1-109 certification of intent is filed with the Appellate Court, then within 35 days after the entry of such judgment.~~ The Supreme Court, or a judge thereof, on motion, may extend the time for petitioning for leave to appeal, but such motions are not favored and will be allowed only in the most extreme and compelling circumstances.

The petition for leave to appeal shall contain, in the following order:

- (1) a prayer for leave to appeal;
- (2) a statement of the date upon which the judgment was entered; ~~whether an affidavit of intent to seek review was filed with the Appellate Court and, if so, the date it was filed;~~ whether a petition for rehearing was filed and, if so, the date of the denial of the petition or the date of the judgment on rehearing;
- (3) a statement of the points relied upon for reversal of the judgment of the Appellate Court;
- (4) a fair and accurate statement of facts, which shall contain the facts necessary to an understanding of the case, without argument or comment, with appropriate references to the pages of the record on appeal, *e.g.*, R. C7 or R. 7, or to the pages of the abstract, if one has been filed, *e.g.*, A. 7. Exhibits may be cited by references to pages of the record on appeal, or of the abstract, or by exhibit number followed by the page number within the exhibit, *e.g.*, Pl. Ex. 1, p. 6;

(5) a short argument (including appropriate authorities) stating why review by the Supreme Court is warranted and why the decision of the Appellate Court should be reversed or modified; and

(6) an appendix which shall include a copy of the opinion or order of the Appellate Court, ~~a copy of the affidavit or the section 1-109 certification of intent to file a petition if an affidavit or a certification was filed with the Appellate Court~~, and any documents from the record which are deemed necessary to the consideration of the petition.

(c) - (h) (No changes.)

Committee Comments
(Addressing 2005 Amendments)

Paragraph (b) is amended to dispense with the requirement of filing an affidavit of intent to file a petition for leave to appeal or a certificate of intent to file a petition for leave to appeal. This amendment is consistent with the public policy of this state as evidenced by the Code of Civil Procedure, which favors resolution on the merits: "This Act shall be liberally construed, to the end that controversies may be speedily and finally determined according to the substantive rights of the parties." 735 ILCS 5/1-106.

The amendment also addresses the concerns addressed in *A.J. Maggio Co. v. Willis*, 197 Ill. 2d 397 (2001); *Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490 (2002); and *Wauconda Fire Prevention District v. Stonewall Orchards, LLP*, No. 97317, March 24, 2005, 2005 WL 674648, all of which dealt with the rather unclear requirements of Rule 315 which had been amended in 1993 to require the filing of an affidavit of intent within 21 days in order to have 35 days in which to file a petition for leave to appeal.

Conforming Amendments to proposed changes to Rule 315

Rule 368. Issuance, Stay, and Recall of Mandates from Reviewing Court

(a) Issuance; Stay on Petition for Rehearing. The clerk of the reviewing court shall transmit to the circuit court the mandate of the reviewing court, with notice to the parties, not earlier than 21 days after the entry of judgment unless the court orders otherwise. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the court. If the petition is denied, the mandate ~~may~~ shall issue ~~7~~ not earlier than 35 days after entry of the order denying the petition unless the court upon motion orders the time shortened or enlarged.

(b) Stay When Review by Supreme Court Is Sought. In cases in which an injunction has been modified or set aside by the Appellate Court, that court's mandate may be stayed only upon order of that court, the Supreme Court or a judge of either court. In all other cases, the mandate is stayed automatically if, before it may issue, a party who is entitled to seek review by the Supreme Court ~~either files in the Appellate Court an affidavit, which may be executed by the party or by the party's attorney, that the party in good faith intends to seek such review or files a petition in the Supreme Court for such review.~~ The stay is effective until the expiration of the time to seek review, and, if review is timely sought, until disposition of the case by the Supreme Court. The Supreme Court, the Appellate Court, or a judge of either court may, upon motion, order otherwise or stay the mandate upon just terms.

(c) Stay or Recall by Order. The Appellate Court, the Supreme Court, or a judge of either court may, upon just terms, stay the issuance of or recall any mandate of the Appellate Court until the time for seeking review by the Supreme Court expires, or if review is timely sought, until it is granted or refused, or if review is granted, until final disposition of the case by the Supreme Court. The stay may apply to any judgment entered or standing affirmed in any court pursuant to the mandate of the Appellate Court. In cases in which review by the Supreme Court of the United States may be sought, the court whose decision is sought to be reviewed or a judge thereof, and in any event the Supreme Court of Illinois or a judge thereof, may stay or recall the mandate, as may be appropriate.