

**Proposal 04-05
(P.R. 0123)**

Offered by the Illinois State Bar Association and the Appellate Lawyers Association

Rule 361. Motions in Reviewing Court

(a) Content of Motions; Supporting Record; Other Supporting Papers. Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion. Motions shall be in writing and shall state the relief sought and the grounds therefor. If the record has not been filed the movant shall file with the motion an appropriate supporting record (Rule 328). When the motion is based on facts that do not appear of record it shall be supported by affidavit. Argument not contained in the motion may be made in a supporting memorandum.

If counsel has conferred with opposing counsel and opposing counsel has no objection to the motion, that fact should be stated in the motion in order to allow the court to rule upon the motion without waiting until the time for filing responses has passed.

(b) In Appellate Court; In Supreme Court While in Session. If the motion is filed in the Appellate Court, or in the Supreme Court while in session, the motion shall be served, presented, and filed as follows:

(1) The motion, together with proof of service, shall be filed with the clerk.

Service and filing will be excused only in case of necessity.

(2) Responses to a motion shall be in writing and be filed, with proof of service, within 5 days after personal or facsimile service of the motion, or 10 days after mailing of the motion if service is by mail, or within such further time as the court or a judge thereof may allow. Except by order of court, replies to responses will not be allowed and oral arguments on motions will not be heard.

(3) Motions, supporting papers, and responses filed in the Supreme Court shall consist of an original and one copy and in the Appellate Court an original and three copies (in workers' compensation cases arising under Rule 22(g) an original and five copies). A proposed order phrased in the alternative (e.g., "Allowed" or "Denied") shall be submitted with each motion, and a copy shall be served upon all counsel of record. A copy of the style of such orders may be obtained from the clerk's office. No motion shall be accepted by the clerk unless accompanied by such a proposed order.

(c) In Supreme Court While Not in Session.

(1) If a rule provides that relief may be granted “by the court or a justice thereof,” the motion shall be directed to only one justice. Such a motion shall be directed to the justice of the judicial district involved or, in Cook County, to the justice designated to hear motions. For the second, third, fourth and fifth judicial districts, a copy of the motion shall be served on the justice at the justice’s district chambers and the original shall be filed with the clerk in Springfield, together with a proof of service that identifies the justice receiving the motion and acknowledges compliance with the proposed-order requirement of paragraph (b)(3). A copy of the response to a motion shall be directed to the justice within the time provided in paragraph (b)(2), and the original shall be filed with the clerk in Springfield. For the first judicial district (Cook County), the motion and one copy, together with a proof of service and a proposed order, shall be filed with the clerk in the Chicago satellite office. The deputy clerk will direct the motion to the justice designated to hear motions. Responses to a motion shall be filed with the clerk in the Chicago satellite office within the time provided in paragraph (b)(2).

(2) If the motion seeks relief that under these rules requires action by the full court, and the case arises from the second, third, fourth, or fifth judicial district, the movant shall mail the original and one copy to the clerk in Springfield with a copy to each justice of the court at the justice’s district chambers. Responses to a motion and one copy shall be filed with the clerk in Springfield, with a copy to each justice at the justice’s district chambers within the time provided in paragraph (b)(2) or, if applicable, within the time provided in Rule 381 or 383. If the case arises from the first judicial district (Cook County), the movant shall file an original and five copies with the clerk in the Chicago satellite office, with a copy to each justice from the second, third, fourth, and fifth judicial districts at the justice’s district chambers. Responses to a motion and five copies shall be filed with the clerk in Chicago with a copy to each justice from the second, third, fourth, and fifth judicial districts at the justice’s district chambers within the time provided in paragraph (b)(2) or, if applicable, within the time provided in Rule 381 or 383. Regardless of district, a proof of service in the form required in the preceding paragraph and showing that a copy has been sent to each justice shall accompany the motion.

(d) When Acted Upon. Except in extraordinary circumstances, or where opposing counsel has indicated no objections, no motion shall be acted upon until the time for filing responses has

expired.

(e) Corrections. The clerk is authorized to make corrections in any document of a party to any pending case upon receipt of written request from that party together with proof that a copy of the request has been transmitted to all other parties.

(f) Motions for Extensions of Time. Motions for extensions of time shall be supported by an affidavit of counsel or the party showing the number of previous extensions granted and the reason for each extension.

(g) Emergency Motions and Bail Motions. Each District of the appellate court shall promulgate and publish rules setting forth the procedure for emergency motions, including notice requirements. Subject to the rules of each District, an emergency motion must specify the nature of the emergency and the grounds for the specific relief requested. Except in the most extreme and compelling circumstances, a motion for an extension of time will not be considered an emergency. Motions regarding bail in criminal cases or bonds in civil and criminal cases shall be considered emergency motions if so designated by the movant.

(h) Dispositive Motions.

(1) Dispositive motions in the appellate court should be ruled upon promptly after the filing of the objection to the motion, if any. A dispositive motion may be taken with the case where the court cannot resolve the motion without consideration of the full record on appeal and full briefing of the merits.

(2) For purposes of this Rule 361(h), “dispositive motion” means any motion challenging the appellate court’s jurisdiction or raising any other issue that could result in the dismissal of any portion of an appeal or cross appeal without a decision on the merits of that portion of the appeal or cross-appeal.

(3) A dispositive motion shall include:

(a) a discussion of the facts and issues on appeal sufficient to enable the court to consider the dispositive motion;

(b) a discussion of the facts and law supporting the dismissal of the appeal or cross-appeal or portion thereof prior to a determination of the appeal on the merits.

(c) a discussion of the relationship, if any, of the purported dispositive issue to the other issues on appeal;

(d) an appropriate supporting record containing (i) if the record on appeal has not yet been filed, the parts of the trial court record necessary to support the dispositive motion; and (ii) if necessary, any evidence of relevant matters not of record in accordance with Rule 361(a).

(4) An objection to a dispositive motion shall address each of the required portions of the motion, and if the record on appeal has not yet been filed, shall include any parts of the trial court record not submitted by the movant that is necessary to oppose the motion, and may include evidence of relevant matters not of record in accordance with Rule 361(a).

(5) The appellate court may order additional briefing, record submissions, or oral argument as it deems appropriate.

Committee Comments

Paragraph (h) was added in 2002 to address the concerns of the bench and bar with respect to dispositive motions in the appellate court. Where a straightforward dispositive issue exists, such as an easily determinable lack of appellate jurisdiction, taking the motion with the case delays the final resolution of the case and greatly increases the burden on all parties by forcing them unnecessarily to brief and argue the merits of the appeal. Paragraph (h) requires that dispositive motions provide the necessary context, including those portions of the record that are necessary to resolve the motion. Where such context is provided, the rule provides that the court should resolve the dispositive motion “promptly after the filing of the objection, if any.”