

M.R. 3140

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

Order entered February 10, 2006.

(Deleted material is struck through and new material is underscored, except for Article IX, which is entirely new.)

Effective July 1, 2006, Supreme Court Rules 222, 315, 317, 368, 451, and 604 are amended and Supreme Court Rule 299 and Article IX are adopted, and effective immediately Supreme Court Rules 181, 711 and 791 are amended and Supreme Court Rule 312 is corrected, as follows:

Amended Rule 181

Rule 181. Appearances–Answers–Motions

(a) When Summons Requires Appearance Within 30 Days After Service.

When the summons requires appearance within 30 days after service, exclusive of the day of service (see Rule 101(d)), the 30-day period shall be computed from the day the copy of the summons is left with the person designated by law and not from the day a copy is mailed, in case mailing is also required. The defendant may make his or her appearance by filing a motion within the 30-day period, in which instance an answer or another appropriate motion shall be filed within the time the court directs in the order disposing of the motion. If the defendant's appearance is made in some other manner, nevertheless his or her answer or appropriate motion shall be filed on or before the last day on which he or she was required to appear.

(b) When Summons Requires Appearance on Specified Day.

(1) *Actions for Money.* Unless the "Notice to Defendant" (see Rule 101(b)) provides otherwise, an appearance in a civil action for money in which the summons requires appearance on a specified day may be made by appearing in person or by attorney at the time and place specified in the summons and making

the appearance known to the court, or before the time specified for appearance by filing a written appearance, answer, or motion, in person or by attorney. The written appearance, answer, or motion shall state with particularity the address where service of notice or papers may be made upon the party or attorney so appearing. When a defendant appears in open court, the court shall require him to enter an appearance in writing. When an appearance is made in writing otherwise than by filing an answer or motion, the defendant shall be allowed 10 days after the day for appearance within which to file an answer or motion, unless the court, by rule or order, otherwise directs.

(2) *Forcible Detainer Actions.* In actions for forcible detainer (see Rule 101(b)), the defendant must appear at the time and place specified in the summons. If the defendant appears, he or she need not file an answer unless ordered by the court; and when no answer is ordered, the allegations of the complaint will be deemed denied, and any defense may be proved as if it were specifically pleaded.

(3) *Small Claims.* Appearances in small claims (actions for money not in excess of ~~\$5,000~~ \$10,000) are governed by Rule 286.

Amended October 21, 1969, effective January 1, 1970; amended December 3, 1996, effective January 1, 1997; amended February 10, 2006, effective immediately.

Amended Rule 222

Rule 222. Limited and Simplified Discovery in Certain Cases

(a) Applicability. This rule applies to all cases subject to mandatory arbitration, civil actions seeking money damages not in excess of \$50,000 exclusive of interest and costs, and to cases for the collection of taxes not in excess of \$50,000. This rule does not apply to small claims, ordinance violations, actions brought pursuant to 750 ILCS (FAMILIES), and actions seeking equitable relief. Except as otherwise specifically provided by this rule, the general rules governing discovery procedures remain applicable to cases governed by this rule.

(b) Affidavit *re* Damages Sought. Any civil action seeking money damages shall have attached to the initial pleading the party's affidavit that the total of money damages sought does or does not exceed \$50,000. If the damages sought do not exceed \$50,000, this rule shall apply. Any judgment on such claim which exceeds

\$50,000 shall be reduced posttrial to an amount not in excess of \$50,000. Any such affidavit may be amended or superseded prior to trial pursuant to leave of court for good cause shown, and only if it is clear that no party will suffer any prejudice as a result of such amendment. Any affidavit filed pursuant hereto shall not be admissible in evidence at trial.

(c) Time for Disclosure; Continuing Duty. The parties shall make the initial disclosure required by this rule as fully as then possible in accordance with the time lines set by local rule, provided however that if no local rule has been established pursuant to Rule 89 then within 120 days after the filing of a responsive pleading to the complaint, counter-complaint, third-party complaint, *etc.*, unless the parties otherwise agree, or for good cause shown, if the court shortens or extends the time. Upon service of a disclosure, a notice of disclosure shall be promptly filed with the court. The duty to provide disclosures as delineated in this rule and its subsections shall be a continuing duty, and each party shall seasonably supplement or amend disclosures whenever new or different information or documents become known to the disclosing party.

All disclosures shall include information and data in the possession, custody and control of the parties as well as that which can be ascertained, learned or acquired by reasonable inquiry and investigation.

* * *

Adopted June 1, 1995, effective January 1, 1996; amended March 28, 2002, effective July 1, 2002; amended February 10, 2006, effective July 1, 2006.

Committee Comments
(February 10, 2006)

The change to paragraph (c) is intended to require practitioners to follow the dictates of local rule. The Committee's intention is to refer practitioners to the rule(s) prescribed by local jurisdictions thereby eliminating confusion and the ability of noncomplying counsel to state that they agreed to extend the time for disclosure without court approval.

New Rule 299

Rule 299. Compensation for Attorneys Appointed to Represent Indigent Parties

(a) Attorneys who are appointed by the courts of this state to represent indigent parties shall be entitled to receive a reasonable fee for their services. In arriving at a reasonable fee for appointed counsel's services, the appointing court should consider: (1) the time spent and the services rendered; (2) the attorney's skill and experience; (3) the complexity of the case; (4) the overhead costs and the burden on the attorney's practice; (5) the rate of compensation for comparable services in the locality; (6) the reduction of the comparable fee by a *pro bono* factor; (7) the number of appointments given to the attorney; and (8) the availability of public funds. No single factor is determinative in establishing a reasonable fee.

(b) Hourly Rate. An attorney appointed by a court in this state to represent an indigent party may be compensated at a rate set by local rule, but not less than \$75 per hour for time expended in court and \$50 per hour for time reasonably expended out of court.

(c) Maximum Amount. Maximum compensation is limited as follows:

For representation of an indigent defendant charged with a misdemeanor, \$750.

For indigent persons: (1) charged with one or more felonies; (2) whose parental rights are sought to be terminated pursuant to the Adoption Act (750 ILCS 50/8) or the Juvenile Court Act (705 ILCS 405/1 through 5); (3) whom the State is seeking to commit as a sexually dangerous person pursuant to the Sexually Dangerous Persons Act (725 ILCS 205/0.01 *et seq.*) or as a sexually violent person pursuant to the Sexually Violent Persons Commitment Act (725 ILCS 207/1 *et seq.*); (4) who have an absolute right to appeal from determinations concerning categories (1), (2) and (3) above, the compensation to be paid to an attorney shall not exceed \$5,000.

(d) Waiving Maximum Amounts. Payment in excess of any maximum amount provided in paragraph (c) may be made for extended or complex representation only when the court making the appointment makes an express, written finding that good cause and exceptional circumstances exist and that the amount of the excess payment is necessary to provide fair compensation and the chief judge of the circuit or the presiding judge of the applicable division of the circuit court of Cook County approves the excess payment. All petitions to exceed the maximum fee guidelines

must be approved prior to the guidelines being exceeded.

Adopted February 10, 2006, effective July 1, 2006.

Committee Comments

(February 10, 2006)

Section 113-3 of the Code of Civil Procedure (725 ILCS 5/113-3) provides: “In all cases, except where the penalty is a fine only, if the court determines that the defendant is indigent and desires counsel, the Public Defender shall be appointed as counsel. Section 113-3 also provides under which circumstances counsel other than a public defender may be appointed.

The Juvenile Court Act provides for counsel to be appointed to all indigent parents threatened with the loss of parental rights (705 ILCS 405/1-5(1)). In *In re Adoption of L.T.M.*, 214 Ill. 2d 60 (2005), the supreme court held that the equal protection clause of the fourteenth amendment to the United States Constitution mandated that indigent parents threatened with the loss of parental rights under the Adoption Act (750 ILCS 50/8) are also entitled to appointed counsel.

Section 5 of the Sexually Dangerous Persons Act (725 ILCS 205/5) provides that persons whom the State seeks to confine pursuant to the Act are entitled to be represented by counsel. Section 30(e) of the Sexually Violent Persons Commitment Act (725 ILCS 207/30(e)) provides that the court shall appoint counsel if the person named in the petition claims or appears to be indigent.

In setting the hourly rate and total compensation, the Committee took into consideration the fact that section 113-3(c)’s provisions of \$40 for time spent in court and \$30 for all other time, applicable only to Cook County, had not been changed in more than 20 years. Section 10(b) of the Capital Crimes Litigation Act (725 ILCS 124/10(b)) provides that trial counsel appointed to represent indigents who are charged in capital cases may be paid a “reasonable rate not to exceed \$125 per hour. The Committee also considered 18 U.S.C. §3006A (“Adequate Representation of Defendants”), which gives the federal Judicial Conference the authority to set a rate of \$90 per hour for time expended in court or for time expended out of court. Section 3006A also sets \$7,000 as a maximum fee in felony cases, \$2,000 in misdemeanor cases and \$5,000 in appellate cases.

Corrected Rule 312

Rule 312. Docketing Statement

(a) Appellant’s Docketing Statement. All appellants, including cross-appellants and separate appellants, whether as a matter of right or as a matter of the court’s discretion, shall file a docketing statement with the clerk of the reviewing court. In the case of an appeal as of right, the appellant shall file the statement within 14 days after filing the notice of appeal or petition for review of an administrative order or the date upon which a motion to file late notice of appeal is allowed. In the case of a discretionary appeal pursuant to Rule 306 or Rule 308, the statement shall be due at the time that the appellant files his or her Rule 306 petition or Rule 308 application. In cases of appeal pursuant to Rule 307(a), the docketing statement shall be filed within 7 days from the filing of the notice of appeal. The docketing statement shall be accompanied by the required reviewing court filing fee if it has not been previously paid. The docketing statement shall be accompanied by any written requests to the circuit clerk or court reporting personnel as defined in Rule 46 for preparation of their respective portions of the record on appeal and be served on all parties to the case with proof of service attached. Within 7 days thereafter, appellee, if it is deemed necessary, may file a short responsive statement with the clerk of the reviewing court with proof of service on all parties.

The form and contents of the docketing statement shall be as follows:

Docket Number in the Reviewing Court

Case Title (Complete)) Appeal from _____ County
) Circuit Number _____
) Trial Judge _____
) Date of Notice of Appeal _____
) Date of Judgment _____
) Date of Postjudgment Motion Order _____

DOCKETING STATEMENT

(Civil)

1. Is this a cross-appeal, separate appeal, joining in a prior appeal, or related to another appeal which is currently pending or which has been disposed of by this court? _____ If so, state the docket number(s) of the other appeal(s):

2. If any party is a corporation or association, identify any affiliate, subsidiary, or parent group: _____

3. Full name of appellant(s) filing this statement:

Counsel on Appeal

For appellant(s) filing this statement

Name: _____

Address: _____

Telephone: _____

Fax: _____

Trial counsel, if different

Name: _____

Address: _____

Telephone: _____

4. Counsel on Appeal

For appellee(s) (if there are multiple appellees represented by different counsel, identify separately)

Name: _____

Address: _____

Telephone: _____

Fax: _____

Trial counsel, if different

Name: _____

Address: _____

Telephone: _____

5. Court reporting personnel (if more space is needed, use other side)

Name: _____

Address: _____

Telephone: _____

Approximate Duration of
trial court proceedings
to be transcribed? _____

Can this appeal
be accelerated? _____

6. Briefly state the supreme court rule, or other law, which confers jurisdiction upon the reviewing court; the facts of the case which bring it within this rule or other law; and the date that the order being appealed was entered and any other facts which are necessary to demonstrate that the appeal is timely:

7. Nature of case:

Administrative Review	_____	Domestic Relations	_____
Contract	_____	Child Custody or	
Estates	_____	Support	_____
Personal Injury	_____	Product Liability	_____
Tort	_____	Forcible Detainer	_____
Juvenile	_____	Other	_____

8. Briefly describe the nature of the case and the result in the trial court, and set forth any reasons for an expedited schedule:

9. State the general issues proposed to be raised (failure to include an issue in this statement will not result in the waiver of the issue on appeal):

I, as attorney for the appellant, hereby certify that on _____ I
(Date)
(asked/made a written request to) the clerk of the circuit court to prepare the record,
(Indicate which)
and on _____ I made a written request to the court reporting personnel
(Date)
to prepare the transcript(s).

Date

Appellant's Attorney

In lieu of court reporting personnel's signature I have attached the written request to the court reporting personnel to prepare the transcript(s).

Date

Appellant's Attorney

I hereby acknowledge receipt of an order for the preparation of a report of proceedings.

Date

Court Reporting Personnel or
Supervisor

Adopted December 17, 1993, effective February 1, 1994; amended December 13, 2005, effective immediately; corrected February 10, 2006, effective immediately.

Amended Rule 315

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

(a) Petition for Leave to Appeal; Grounds. Except as provided below for appeals from the Illinois Workers' Compensation Commission division of the Appellate

Court, a petition for leave to appeal to the Supreme Court from the Appellate Court may be filed by any party, including the State, in any case not appealable from the Appellate Court as a matter of right. Whether such a petition will be granted is a matter of sound judicial discretion. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered: the general importance of the question presented; the existence of a conflict between the decision sought to be reviewed and a decision of the Supreme Court, or of another division of the Appellate Court; the need for the exercise of the Supreme Court's supervisory authority; and the final or interlocutory character of the judgment sought to be reviewed.

No petition for leave to appeal from a judgment of the five-judge panel of the Appellate Court designated to hear and decide cases involving review of Illinois Workers' Compensation Commission orders shall be filed, unless at least one judge of that panel files a statement that the case in question involves a substantial question which warrants consideration by the Supreme Court. A motion asking that such a statement be filed may be filed as a prayer for alternative relief in a petition for rehearing, but must, in any event, be filed within the time allowed for filing a petition for rehearing.

(b) Time; Contents.

(1) Published Decisions. 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.

(2) Rule 23 Orders. The time for filing a petition for leave to appeal a Rule 23

order shall be the same as for published opinions, except that if the party who prevailed on an issue in the appellate court timely files a motion to publish a Rule 23 order pursuant to Rule 23(f), and if the motion is granted, a nonmoving party may file a petition for leave to appeal within 35 days after the entry of the order granting the motion to publish. The filing of a Rule 23(f) publication motion shall not invalidate a previously filed petition for leave to appeal.

(c) Contents. 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~~ in asking the Supreme Court to review the judgment of the Appellate Court;

(4) a fair and accurate statement of the 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.

(e) (d) Format; Service; Filing. The petition shall otherwise be prepared, duplicated, served, and filed in accordance with the requirements for briefs as set forth in Rules 341 through 344, except that it shall be limited to 20 pages excluding only the appendix.

(d) (e) Records; Abstracts. If an abstract has been filed in the Appellate Court, the petitioner shall file two or, if available, eight copies thereof in the Supreme Court, and for that purpose the clerk of the Appellate Court, when requested, shall release to the petitioner any available copies thereof. The clerk of the Supreme Court shall send

notice of the filing of the petition to the clerk of the Appellate Court, who, upon request of the clerk of the Supreme Court made either before or after the petition is acted upon and at the expense of the petitioner, shall transmit to the clerk of the Supreme Court the record on appeal that was filed in the Appellate Court and a certified copy of the Appellate Court record. If leave to appeal is not granted, any certified papers and, to the extent available, copies of abstracts shall be returned forthwith to the clerk of the Appellate Court.

(e) (f) Answer. The respondent need not but may file an answer, with proof of service, within 14 days after the expiration of the time for the filing of the petition, or within such further time as the Supreme Court or a judge thereof may grant within such 14-day period. An answer shall set forth reasons why the petition should not be granted, and shall conform, to the extent appropriate, to the form specified in this rule for the petition, omitting the items (1), (2), (3), (4) and (6) set forth in paragraph (b) except to the extent that correction of the petition is considered necessary. The answer shall be prepared, duplicated, served, and filed in accordance with the requirements for briefs except that it shall be limited to 20 pages excluding only the appendix. No reply to the answer shall be filed. If the respondent does not file an answer or otherwise appear but wants notice of the disposition of the petition for leave to appeal, a letter requesting such notice should be directed to the clerk in Springfield.

(f) (g) Abstracts; Transmittal of Trial Court Record if Petition Is Granted. If the petition is granted, and to the extent that copies have not already been filed, the appellant shall file 20 copies of the abstract, as filed in the Appellate Court, within the time for the filing of his or her brief. If no abstract was filed in the Appellate Court, but the Supreme Court so orders, an abstract shall be prepared and filed in accordance with Rule 342. Upon the request of any party made at any time before oral argument or upon direction of the Supreme Court, the clerk of the Appellate Court, at the expense of the petitioner, shall transmit to the Supreme Court the record on appeal that was filed in the Appellate Court and the Appellate Court record, if not already filed in the Supreme Court.

(g) (h) Briefs. If leave to appeal is allowed, the appellant may allow his or her petition for leave to appeal to stand as the brief of appellant, or may file a brief in lieu of or supplemental thereto. Within 14 days after the date on which leave to appeal was allowed, appellant shall serve on all counsel of record a notice of election to allow the petition for leave to appeal to stand as the brief of appellant, or to file an additional brief, and within the same time shall file a copy of the notice with the clerk of the Supreme Court. If appellant elects to allow the petition for leave to appeal to stand as his or her brief, appellant shall file with the notice a complete table of contents, with page references, of the record on appeal and a statement of the applicable standard of

review for each issue, with citation to authority, in accordance with Rule 341(e)(3). If appellant elects to file an additional brief, it shall be filed within 35 days from the date on which leave to appeal was allowed. Motions to extend the time for filing an additional brief are not favored and will be allowed only in the most extreme and compelling circumstances.

The appellee may allow his or her answer to the petition for leave to appeal to stand as the brief of appellee, or may file a brief in lieu of or supplemental thereto. If the appellant has elected to allow the petition for leave to appeal to stand as the brief of appellant, within 14 days after the due date of appellant's notice the appellee shall serve on all counsel of record a notice of election to let the answer stand as the brief of appellee, or to file an additional brief, and within the same time shall file a copy of the notice with the clerk of the Supreme Court. If the appellee elects to file an additional brief, such brief shall be filed within 35 days of the due date of appellant's notice of election to let the petition for leave to appeal stand as the brief of appellant.

If the appellant has elected to file an additional brief, within 14 days after the due date of appellant's brief the appellee shall serve on all counsel of record a notice of election to let his or her answer stand as the brief of appellee, or to file an additional brief, and within the same time shall file a copy of the notice with the clerk of the Supreme Court. If appellee elects to file an additional brief it shall be filed within 35 days of the due date of appellant's brief.

If an appellee files a brief, the appellant may file a reply brief within 14 days of the due date of appellee's brief. If the brief of appellee contains arguments in support of cross-relief, the appellant's arguments in opposition shall be included in the reply brief and the appellee may file a reply brief confined strictly to those arguments within 14 days of the due date of appellant's reply brief. If the brief of the appellee contains arguments in support of cross-relief, the cover of the brief shall be captioned: "Brief of Appellee. Cross-Relief Requested."

Briefs, pleadings and other documents filed with the Supreme Court in cases covered by this rule shall, to the extent appropriate, conform to Rules 341 through 344.

In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(h) (i) Oral Argument. Oral argument may be requested as provided in Rule 352(a).

Amended effective November 30, 1972; amended effective September 1, 1974; amended October 1, 1976, effective November 15, 1976; amended September 29, 1978, effective November 1, 1978; amended July 30, 1979, effective October 15, 1979; amended February 19, 1982, effective April 1, 1982; amended May 28, 1982, effective July 1, 1982; amended February 1, 1984, effective February 1, 1984, with Justice Moran dissenting (see *Yellow Cab Co. v. Jones* (1985), 108 Ill. 2d 330, 342); amended April 27, 1984, effective July 1, 1984; amended February 21, 1986, effective August 1, 1986; amended February 27, 1987, effective April 1, 1987; amended April 7, 1993, effective June 1, 1993; amended December 17, 1993, effective February 1, 1994; amended September 23, 1996, effective immediately; amended September 22, 1997, effective October 1, 1997; amended March 19, 2003, effective May 1, 2003; amended December 5, 2003, effective immediately; amended October 15, 2004, effective January 1, 2005; amended February 10, 2006, effective July 1, 2006.

Committee Comments
(February 10, 2006)

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 evinced 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*, 214 Ill. 2d 417 (2005), 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.

Paragraph (b) is further amended to separate the provision on the time for filing a petition for leave to appeal, which remains in paragraph (b), from the provision on the content of the petition, which becomes a new paragraph (c). The subsequent paragraphs are relettered accordingly.

Paragraph (b) is also amended to allow a party that may not have sought Supreme Court review of an adverse disposition under Rule 23(b) or (c) the opportunity to seek review of that disposition after the Appellate Court grants a motion to publish it.

Amended Rule 317

Rule 317. Appeals from the Appellate Court to the Supreme Court as of Right

Appeals from the Appellate Court shall lie to the Supreme Court as a matter of right in cases in which a statute of the United States or of this state has been held invalid or in which a question under the Constitution of the United States or of this state arises for the first time in and as a result of the action of the Appellate Court. The appeal shall be initiated by filing a petition in the form prescribed by Rule 315, except that the petition shall be entitled "Petition for Appeal as a Matter of Right. Item (1) of the petition shall state that the appeal is taken as a matter of right and item (5) shall contain argument as to why appeal to the Supreme Court lies as a matter of right. In other respects the procedure is governed by Rule 315. If leave to appeal is to be sought in the alternative, the request therefor must be included in the same petition, and item (1) thereof shall include an alternative prayer for leave to appeal, and item (5) the argument as to why in the alternative leave to appeal should be allowed as a matter of sound judicial discretion. When both appeal as a matter of right and leave to appeal are sought, both requests will be disposed of by a single order. If the court allows the petition, briefs, and abstracts in cases in which they are required, shall be filed as provided in the case of appeal by leave under Rule 315.

Amended June 26, 1970, effective July 1, 1970; amended July 30, 1979, effective October 15, 1979 ; amended February 10, 2006, effective July 1, 2006.

Amended Rule 368

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 ~~2+~~ 35 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.

Amended December 17, 1993, effective February 1, 1994; amended February 10, 2006, effective July 1, 2006.

Amended Rule 451

Rule 451. Instructions

(a) Use of IPI Criminal Instructions; Requirements of Other Instructions. Whenever Illinois Pattern Jury Instructions, Criminal (~~2d ed. 1981~~) (4th ed. 2000) (IPI Criminal ~~2d~~ 4th), contains an instruction applicable in a criminal case, giving due consideration to the facts and the governing law, and the court determines that the jury should be instructed on the subject, the IPI Criminal ~~2d~~ 4th instruction shall be used, unless the court determines that it does not accurately state the law. Whenever IPI

Criminal ~~2d~~ 4th does not contain an instruction on a subject on which the court determines that the jury should be instructed, the instruction given on that subject should be simple, brief, impartial, and free from argument.

(b) Court's Instructions. At any time before or during the trial, the court may direct counsel to prepare designated instructions. Counsel shall comply with the direction, and copies of instructions so prepared shall be marked "Court's Instructions. Counsel may object at the conference on instructions to any instruction prepared at the court's direction, regardless of who prepared it, and the court shall rule on these objections as well as objections to other instructions. The grounds of the objections shall be particularly specified.

(c) Section 2–1107 of the Code of Civil Procedure to Govern. Except as otherwise provided in these rules, instructions in criminal cases shall be tendered, settled, and given in accordance with section 2–1107 of the Code of Civil Procedure, but substantial defects are not waived by failure to make timely objections thereto if the interests of justice require. The court shall instruct the jury after the arguments are completed, or, in its discretion, at the close of all the evidence.

(d) Procedure. The court shall be provided an original and a copy of each instruction, and a copy shall be delivered to each opposing counsel. In addition to numbering the copies and indicating who tendered them, as required by section 2–1107 of the Code of Civil Procedure, the copy shall contain a notation substantially as follows:

"IPI Criminal ~~2d~~ 4th No. _____ or "IPI Criminal No. _____ Modified or "Not in IPI Criminal

as the case may be. All objections made at the conference and the rulings thereon shall be shown in the report of proceedings.

(e) Instructions Before Opening Statements. After the jury is selected and before opening statements, the court may orally instruct the jury as follows:

(i) On cautionary or preliminary matters, including, but not limited to, the burden of proof, the believability of witnesses, and the receipt of evidence for a limited purpose.

(ii) On the issue of substantive law applicable to the case, including, but not limited to, the elements of the offense. When requested by the defendant, the court may instruct the jury on the elements of an affirmative defense. Nothing in this rule is intended to eliminate the giving of written instructions at the close of the trial in accord with paragraph (c).

(f) Instructions During Trial. Nothing in the rule is intended to restrict the court's authority to give any appropriate instruction during the course of the trial.

(g) Proceedings When an Enhanced Sentence is Sought. When the death penalty is not being sought and the State intends, for the purpose of sentencing, to rely on one or more sentencing enhancement factors which are subject to the notice and proof requirements of section 111-3(c-5) of the Code of Criminal Procedure, the court may, within its discretion, conduct a unitary trial through verdict on the issue of guilt and on the issue of whether a sentencing enhancement factor exists. The court may also, within its discretion, upon motion of a party, conduct a bifurcated trial. In deciding whether to conduct such a bifurcated trial, the court must first hold a pretrial hearing to determine if proof of the sentencing enhancement factor is not relevant to the question of guilt or if undue prejudice outweighs the factor's probative value. Such bifurcated trial shall be conducted subject to the following:

(1) The court shall first conduct a trial through verdict on the issue of guilt under the procedures applicable to trials in other cases.

(2) If a guilty verdict is rendered, the court shall then conduct a separate proceeding before the same jury, or before the court if a jury was waived at trial or is waived for purposes of the separate proceeding. This separate proceeding shall be confined to the issue of whether the sentencing enhancement factor exists. The order in which the parties may present evidence and argument and the rules governing admission of evidence shall be the same as at trial, with the burden remaining on the State to prove the factor beyond a reasonable doubt. After the evidence is closed, the submission and giving of instructions shall proceed in accordance with paragraphs (a), (b), (c) and (d) of this rule.

(3) The court may enter a directed verdict or judgment notwithstanding the verdict respecting any fact at issue in the separate proceeding.

Amended June 19, 1968, effective January 1, 1969; amended February 19, 1982, effective April 1, 1982; amended May 28, 1982, effective July 1, 1982; amended May 20, 1997, effective July 1, 1997; amended February 10, 2006, effective July 1, 2006.

Committee Comments
(February 10, 2006)

Paragraph (g)

In response to the Supreme Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000), the Illinois legislature adopted Illinois

Code of Criminal Procedure section 111–3(c-5) (725 ILCS 5/111–3(c-5)), which sets notice and proof requirements for sentencing enhancement factors in nondeath penalty cases. However, this section does not specify how the sentencing enhancements are to be tried when the trier of fact is a jury. Rule 451(a) provides a basis for trial courts to utilize special interrogatories when the sentencing enhancement factor is to be proven during a unitary trial.

The Supreme Court Committee on Jury Instructions in Criminal Cases recommended the adoption of a rule which would provide that bifurcated trials as well as unitary trials are authorized, and that trial courts have discretion in deciding which to conduct.

Because bifurcating a trial generally causes additional inconvenience to the jury, the witnesses, and/or the parties, and causes additional cost to the parties and/or the taxpayers, paragraph (g) makes unitary trials the presumptive option. Before a court orders a bifurcated trial, the court must find that having a unitary trial might cause prejudice and that this risk outweighs the additional difficulties associated with a bifurcated trial. Paragraph (g) does not apply when the court serves as trier of fact on sentencing enhancement factors. Whether to bifurcate in that circumstance involves different considerations.

Amended Rule 604

Rule 604. Appeals from Certain Judgments and Orders

(a) Appeals by the State.

(1) *When State May Appeal.* In criminal cases the State may appeal only from an order or judgment the substantive effect of which results in dismissing a charge for any of the grounds enumerated in section 114–1 of the Code of Criminal Procedure of 1963; arresting judgment because of a defective indictment, information or complaint; quashing an arrest or search warrant; suppressing evidence; decertifying a prosecution as a capital case on the grounds enumerated in section 9–1(h-5) of the Criminal Code of 1961; or finding that the defendant is mentally retarded after a hearing conducted pursuant to section 114–15(b) of the Code of Criminal Procedure of 1963.

(2) *Leave to Appeal by State.* The State may petition for leave to appeal under Rule 315(a).

(3) *Release of Defendant Pending Appeal.* A defendant shall not be held in jail

or to bail during the pendency of an appeal by the State, or of a petition or appeal by the State under Rule 315(a), unless there are compelling reasons for his or her continued detention or being held to bail.

(4) *Time Appeal Pending Not Counted.* The time during which an appeal by the State is pending is not counted for the purpose of determining whether an accused is entitled to discharge under section 103-5 of the Code of Criminal Procedure of 1963.

(b) Appeals When Defendant Placed Under Supervision or Sentenced to Probation, Conditional Discharge or Periodic Imprisonment. A defendant who has been placed under supervision or found guilty and sentenced to probation or conditional discharge (see ~~Ill. Rev. Stat. 1981, ch. 38, pars. 1005-6-1 through 1005-6-4~~ 730 ILCS 5/5-6-1 through 5-6-4), or to periodic imprisonment (see ~~Ill. Rev. Stat. 1981, ch. 38, pars. 1005-7-1 through 1005-7-8~~ 730 ILCS 5/5-7-1 through 5-7-8), may appeal from the judgment and may seek review of the conditions of supervision, or of the finding of guilt or the conditions of the sentence, or both. He or she may also appeal from an order modifying the conditions of or revoking such an order or sentence.

(c) Appeals From Bail Orders by Defendant Before Conviction.

(1) *Appealability of Order With Respect to Bail.* Before conviction a defendant may appeal to the Appellate Court from an order setting, modifying, revoking, denying, or refusing to modify bail or the conditions thereof. As a prerequisite to appeal the defendant shall first present to the trial court a written motion for the relief to be sought on appeal. The motion shall be verified by the defendant and shall state the following:

- (i) the defendant's financial condition;
- (ii) his or her residence addresses and employment history for the past 10 years;
- (iii) his or her occupation and the name and address of his or her employer, if he or she is employed, or his or her school, if he or she is in school;
- (iv) his or her family situation; and
- (v) any prior criminal record and any other relevant facts.

If the order is entered upon motion of the prosecution, the defendant's verified answer to the motion shall contain the foregoing information.

(2) *Procedure.* The appeal may be taken at any time before conviction by filing a verified motion for review in the Appellate Court. The motion for review shall be accompanied by a verified copy of the motion or answer filed in the trial court and shall state the following:

- (i) the court that entered the order;
- (ii) the date of the order;
- (iii) the crime or crimes charged;
- (iv) the amount and condition of bail;
- (v) the arguments supporting the motion; and
- (vi) the relief sought.

No brief shall be filed. A copy of the motion shall be served upon the opposing party. The State may promptly file an answer.

(3) *Disposition*. Upon receipt of the motion, the clerk shall immediately notify the opposing party by telephone of the filing of the motion, entering the date and time of the notification on the docket, and promptly thereafter present the motion to the court.

(4) *Report of Proceedings*. The court, on its own motion or on the motion of any party, may order court reporting personnel as defined in Rule 46 to file in the Appellate Court a report of all proceedings had in the trial court on the question of bail.

(5) *No Oral Argument*. No oral argument shall be permitted except when ordered on the court's own motion.

(d) Appeal by Defendant From a Judgment Entered Upon a Plea of Guilty.

No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment. No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment. For purposes of this rule, a negotiated plea of guilty is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending. The motion shall be in writing and shall state the grounds therefor. When the motion is based on facts that do not appear of record it shall be supported by affidavit. The motion shall be presented promptly to the trial judge by whom the defendant was sentenced, and if that judge is then not sitting in the court in which the judgment was entered, then to the chief judge of the circuit, or to such other judge as the chief judge shall designate. The trial court shall then determine whether the defendant is represented by counsel, and if the defendant is indigent and desires counsel, the trial court shall appoint counsel. If the

defendant is indigent, the trial court shall order a copy of the transcript as provided in Rule 402(e) be furnished the defendant without cost. The defendant's attorney shall file with the trial court a certificate stating that the attorney has consulted with the defendant either by mail or in person to ascertain defendant's contentions of error in the sentence or the entry of the plea of guilty, has examined the trial court file and report of proceedings of the plea of guilty, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings. The motion shall be heard promptly, and if allowed, the trial court shall modify the sentence or vacate the judgment and permit the defendant to withdraw the plea of guilty and plead anew. If the motion is denied, a notice of appeal from the judgment and sentence shall be filed within the time allowed in Rule 606, measured from the date of entry of the order denying the motion. Upon appeal any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived.

(e) Appeal From an Order Finding Defendant Unfit to Stand Trial or Be Sentenced. The defendant or the State may appeal to the Appellate Court from an order holding the defendant unfit to stand trial or be sentenced.

(f) Appeal by Defendant on Grounds of Former Jeopardy. The defendant may appeal to the Appellate Court the denial of a motion to dismiss a criminal proceeding on grounds of former jeopardy.

(g) Appeal From an Order Granting a Motion to Disqualify Defense Counsel. The defendant may petition for leave to appeal to the Appellate Court from an order of the circuit court granting a motion to disqualify the attorney for the defendant based on a conflict of interest.

Amended effective July 1, 1969; amended October 21, 1969, effective January 1, 1970; amended effective October 1, 1970, July 1, 1971, November 30, 1972, September 1, 1974, and July 1, 1975; amended February 19, 1982, effective April 1, 1982; amended June 15, 1982, effective July 1, 1982; amended August 9, 1983, effective October 1, 1983; amended April 1, 1992, effective August 1, 1992; amended October 5, 2000, effective November 1, 2000; amended February 1, 2005, effective immediately; amended December 13, 2005, effective immediately; amended February 10, 2006, effective July 1, 2006.

Committee Comment
(February 10, 2006)

Paragraph (g)

Paragraph (g) permits interlocutory review of certain attorney disqualification orders but does not change attorney disqualification law. The circuit court still has discretion to accept or reject a defendant's conflict of interest waiver, based on consideration of the interests identified in *People v. Ortega*, 209 Ill. 2d 354 (2004).

Amended Rule 711

Rule 711. Representation by Supervised Senior Law Students or Graduates

(a) Eligibility. A student in a law school approved by the American Bar Association may be certified by the dean of the school to be eligible to perform the services described in paragraph (c) of this rule, if he/she satisfies the following requirements:

(1) He/She must have received credit for work representing at least three-fifths of the total hourly credits required for graduation from the law school.

(2) He/She must be a student in good academic standing, and be eligible under the school's criteria to undertake the activities authorized herein.

A graduate of a law school approved by the American Bar Association who (i) has not yet had an opportunity to take the examinations provided for in Rule 704, (ii) has taken the examinations provided for in Rule 704 but not yet received notification of the results of either examination, or (iii) has taken and passed both examinations provided for in Rule 704 but has not yet been sworn as a member of the Illinois bar may, if the dean of that law school has no objection, be authorized by the Administrative Director of the Illinois Courts to perform the services described in paragraph (c) of this rule.

For purposes of this rule, a law school graduate is defined as any individual not yet licensed to practice law in any jurisdiction.

(b) Agencies Through Which Services Must Be Performed. The services authorized by this rule may only be carried on in the course of the student's or graduate's work with one or more of the following organizations or programs:

(1) a legal aid bureau, legal assistance program, organization, or clinic chartered by the State of Illinois or approved by a law school approved by the American Bar Association;

(2) the office of the public defender; or

(3) a law office of the State or any of its subdivisions.

(c) Services Permitted. Under the supervision of a member of the bar of this State, and with the written consent of the person on whose behalf he/she is acting,

which shall be filed in the case and brought to the attention of the judge or presiding officer, an eligible law student or graduate may render the following services:

(1) He/She may counsel with clients, negotiate in the settlement of claims, and engage in the preparation and drafting of legal instruments.

(2) He/She may appear in the trial courts and administrative tribunals of this State, subject to the following qualifications:

(i) Appearances, pleadings, motions, and other documents to be filed with the court may be prepared by the student or graduate and may be signed by him with the accompanying designation "Senior Law Student" or "Law Graduate" but must also be signed by the supervising member of the bar.

(ii) In criminal cases, in which the penalty may be imprisonment, in proceedings challenging sentences of imprisonment, and in civil or criminal contempt proceedings, the student or graduate may participate in pretrial, trial, and posttrial proceedings as an assistant of the supervising member of the bar, who shall be present and responsible for the conduct of the proceedings.

(iii) In all other civil and criminal cases the student or graduate may conduct all pretrial, trial, and posttrial proceedings, and the supervising member of the bar need not be present.

(3) He/She may prepare briefs, excerpts from the record, abstracts, and other documents filed in courts of review of the State, which may set forth the name of the student or graduate with the accompanying designation "Senior Law Student" or "Law Graduate" but must be filed in the name of the supervising member of the bar.

(d) Compensation. A student or graduate rendering services authorized by this rule shall not request or accept any compensation from the person for whom he/she renders the services, but may receive compensation from an agency described in paragraph (b) above in accordance with an approved program.

(e) Certification and Authorization.

(1) Upon request of a student or the appropriate organization, the dean of the law school in which the student is in attendance may, if he/she finds that the student meets the requirements stated in paragraph (a) of this rule, file with the Administrative Director a certificate so stating. Upon the filing of the certificate and until it is withdrawn or terminated the student is eligible to render the services described in paragraph (c) of this rule. The Administrative Director shall authorize, upon review and approval of the completed application of an eligible student as defined in paragraph (a) and the certification as described in paragraph (e), the issuance of the temporary license. No services that are permitted under

paragraph (c) shall be performed prior to the issuance of a temporary license.

(2) Unless otherwise provided by the Administrative Director for good cause shown, or unless sooner withdrawn or terminated, the certificate shall remain in effect until the expiration of 18 months after it is filed, or until the announcement of the results of the first bar examination following the student's graduation, whichever is earlier. The certificate of a student who passes that examination shall continue in effect until he/she is admitted to the bar.

(3) The certificate may be withdrawn by the dean at any time, without prior notice, hearing, or showing of cause, by the mailing of a notice to that effect to the Administrative Director and copies of the notice to the student and to the agencies to which the student had been assigned.

(4) The certificate may be terminated by this court at any time without prior notice, hearing, or showing of cause. Notice of the termination may be filed with the Administrative Director, who shall notify the student and the agencies to which the student had been assigned.

(f) Application by Law Graduate. A law school graduate who wishes to be authorized to perform services described in paragraph (c) of this rule shall apply directly to the Administrative Director, with a copy to the dean of the law school from which he/she graduated.

Amended effective May 27, 1969; amended July 1, 1985, effective August 1, 1985; amended July 3, 1986, effective August 1, 1986; amended June 19, 1989, effective August 1, 1989; amended June 12, 1992, effective July 1, 1992; amended October 10, 2001, effective immediately; amended December 5, 2003, effective immediately; amended February 10, 2006, effective immediately.

Amended Rule 791

Rule 791. Persons Subject to MCLE Requirements

(a) Scope and Exemptions

These Rules shall apply to every attorney admitted to practice law in the State of Illinois, except for the following persons, who shall be exempt from the Rules' requirements:

(1) All attorneys on inactive or retirement status pursuant to Supreme Court Rules 756(a)(5) or (a)(6), respectively;

(2) All attorneys on disability inactive status pursuant to Supreme Court Rules 757 or 758;

(3) All attorneys serving in the office of justice, judge, associate judge, or magistrate of any federal or state court;

(4) All attorneys who, by virtue of their office or employment in the state or federal judiciary, are prohibited by the Supreme Court of Illinois or the federal judiciary from actively engaging in the practice of law;

(5) All attorneys licensed to practice law in Illinois who are on active duty in the Armed Forces of the United States, until their release from active military service and their return to the active practice of law;

(6) An attorney otherwise subject to this rule who is also a member of the bar of another state which has a minimum continuing education requirement, who is regularly engaged in the practice of law in that state, and who has appropriate proof that he or she is in full compliance with the continuing legal education requirements established by court rule or legislation in that state; and

(7) In rare cases, upon a clear showing of good cause, the Board may grant a temporary exemption to an attorney from the Minimum Continuing Legal Education (“MCLE”) requirements, or an extension of time in which to satisfy them. Good cause for an exemption or extension may exist in the event of illness, financial hardship, or other extraordinary or extenuating circumstances beyond the control of the attorney.

(b) Full Exemptions

An attorney shall be exempt from these Rules for an entire reporting period applicable to that attorney, if:

(1) The attorney is exempt from these Rules pursuant to paragraphs (a)(1), (a)(2), (a)(3), (a)(4), ~~or (a)(5)~~, or (a)(6), on the last day of that reporting period; or

(2) The attorney is exempt from these Rules pursuant to paragraphs (a)(1), (a)(2), (a)(3), (a)(4), ~~or (a)(5)~~, or (a)(6), for at least 365 days of that reporting period; or

(3) The attorney receives a temporary exemption from the Board pursuant to paragraph ~~(a)(6)~~ (a)(7), for that reporting period.

(c) Partial Exemptions

An attorney who is exempt from these Rules for more than 60, but less than 365, days of a two-year reporting period, and who is not exempt for the entire reporting period pursuant to paragraph (b), shall be required to earn one-half of the CLE activity hours that would otherwise be required pursuant to Rules 794(a) and (d).

(d) Nonexemptions

An attorney who is exempt from these Rules for less than 61 days during a two-year reporting period, and who is not exempt for the entire reporting period pursuant to paragraph (b), shall be required to earn all of the CLE activity hours required pursuant to Rules 794(a) and (d).

(e) Resuming Active Status

An attorney who was exempt from these Rules, pursuant to paragraphs (b)(1) or (b)(2), above, for the attorney's last completed reporting period because the attorney was on inactive, retirement or disability inactive status pursuant to Supreme Court Rules 756(a)(5) or (a)(6), 757 or 758, shall upon return to active status, have 24 months to complete the deferred CLE requirements, not to exceed two times the requirement for the current two-year reporting period, in addition to the CLE credit required for the current two-year reporting period.

Adopted September 29, 2005, effective immediately; amended December 6, 2005, effective immediately; amended February 10, 2006, effective immediately.

New Article IX

**ARTICLE IX. CHILD CUSTODY PROCEEDINGS
PART A. RULES OF GENERAL APPLICATION TO CHILD CUSTODY
PROCEEDINGS**

Rule 900. Purpose and Scope

(a) Purpose. Trial courts have a special responsibility in cases involving the care and custody of children. When a child is a ward of the court, the physical and emotional well-being of the child is literally the business of the court. The purpose of this article (Rules 900 *et seq.*) is to expedite cases affecting the custody of a child, to ensure the coordination of custody matters filed under different statutory Acts, and to focus child custody proceedings on the best interests of the child, while protecting the rights of other parties to the proceedings.

(b)(1) Definitions. For the purposes of this article "child custody proceeding means an action affecting child custody or visitation. "Child" means a person who has not attained the age of 18.

(b)(2) Part A. Scope. Rules 900 through 920, except as stated therein, apply to all child custody proceedings initiated under article II, III, or IV of the Juvenile Court Act of 1987, the Illinois Marriage and Dissolution of Marriage Act, the Uniform Child Custody Jurisdiction and Enforcement Act, the Illinois Parentage Act of 1984, the Illinois Domestic Violence Act of 1986 and article 112A of the Code of Criminal Procedure of 1963, and guardianship matters involving a minor under article XI of the Probate Act of 1975.

(b)(3) Part B. Scope of Rules 921 through 940. Rules 921 through 940 apply to child custody proceedings initiated under the Illinois Marriage and Dissolution of Marriage Act, and the Illinois Parentage Act of 1984.

(b)(4) Part C. Scope of Rule 942. Rule 942 applies to child custody proceedings under articles II, III, and IV of the Juvenile Court Act of 1987.

(c) Applicability of Other Rules. Applicable provisions of articles I and II of these rules shall continue to apply in child custody proceedings except as noted in this article.

Adopted February 10, 2006, effective July 1, 2006.

Committee Comments
Special Supreme Court Committee on Child Custody Issues

Rule 900 emphasizes the importance of child custody proceedings and highlights the purpose of the rules that follow, which is to ensure that child custody proceedings are expeditious, child-focused and fair to all parties.

The rules in the 900 series were written by the Special Supreme Court Committee on Child Custody Issues. The Special Committee was appointed shortly after our Supreme Court adopted the rules promulgated by the Special Supreme Court Committee on Capital Cases. See Rule 43 (judicial seminars on capital cases), Rule 411 (applicability of discovery rules to capital sentencing hearings), Rule 412(c) (State identification of material that may be exculpatory or mitigating), Rule 417 (DNA evidence), and Rules 701(b) and 714 (Capital Litigation Bar). These rules were designed to improve pretrial and trial procedures in capital cases. In appointing the Special Committee on Child Custody Issues, our Supreme Court indicated its strong desire to address problems which were apparent in the most significant cases courts must decide—those involving child custody.

Our supreme court and legislature have repeatedly stressed the need for child custody proceedings to be handled expeditiously, with great emphasis on the best

interest of the child. As pointed out by our Supreme Court in *In re D.F.*, 208 Ill. 2d 223, 241 (2003), the Juvenile Court Act of 1987 (705 ILCS 405/2–14(a)), sets forth the “legislature’s stated policy and purpose of expediting juvenile court proceedings and seeking permanency for children in a ‘just and speedy’ manner. Similarly, the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/606(a)) provides: “Custody proceedings shall receive priority in being set for hearing. As explained by our Supreme Court in *In re A.W.J.*, 197 Ill. 492, 497-98 (2001): “Like proceedings under the Adoption Act (750 ILCS 50/1 *et seq.* (West 1994)) and the Juvenile Court Act of 1987 (705 ILCS 405/2–1 *et seq.* (West 1994)) custody proceedings under the Marriage and Dissolution Act are guided by the overriding lodestar of the best interests of the child or children involved.

The Special Committee noted that proceedings under the Adoption Act “shall receive priority over other civil cases in being set for hearing, and that appealable orders under the Adoption Act “shall be prosecuted and heard on an expedited basis. 750 ILCS 50/20.

The Special Committee also noted that, effective July 1, 2004, our Supreme Court adopted Rule 306 A, Expedited Appeals in Child Custody Cases. Rule 306 A (f) provides that “Except for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal. Rule 306 A (h) provides in part: “Requests for continuance are disfavored and shall be granted only for compelling circumstances.

Paragraph (b)(1) defines “Child custody proceeding broadly for the purposes of the rules. The broad definition is important, because the need to expedite custody decisions applies to all types of custody cases and coordination of custody cases is essential.

The rest of Rule 900(b) sets out the scope of the Committee’s other rule proposals.

Paragraph (b)(2) explains that Part A of the rules, consisting of Rules 900 through 920, is applicable to all child custody proceedings, except as noted. Rules 909 through 920 are reserved.

Paragraph (b)(3) explains that Part B of the rules, consisting of Rules 921 through 940, deals with dissolution of marriage and paternity cases. Rules 925 through 940 are reserved.

Paragraph (b)(4) explains that Part C of the rules, consisting only of Rule 942, Court Family Conferences, applies to nondelinquency juvenile cases.

Other Supreme Court rules will continue to apply in child custody proceedings unless noted.

The 900 series of rules does not address proceedings arising under the Adoption Act (750 ILCS 50/1 *et seq.*). The Special Committee believes that adoption is qualitatively different from the child custody proceedings addressed in the Rule 900 series. Consequently, any rule changes applicable to proceedings under the Adoption Act will be addressed separately.

Rule 901. General Rules

(a) Expedited Hearings. Child custody proceedings shall be scheduled and heard on an expedited basis. Hearings in child custody proceedings shall be held in strict compliance with applicable deadlines established by statute or by this article.

(b) Setting of Hearings. Hearings in child custody proceedings shall be set for specific times. At each hearing, the next hearing shall be scheduled and the parties shall be notified of the date and time of the next hearing. Hearings rescheduled following a continuance shall be set for the earliest possible date.

(c) Continuances. Parties, witnesses and counsel shall be held accountable for attending hearings in child custody proceedings. Continuances shall not be granted in child custody proceedings except for good cause shown and may be granted if the continuance is consistent with the health, safety and best interests of the child. The party requesting the continuance and the reasons for the continuance shall be documented in the record.

(d) In any child custody proceeding taken under advisement by the trial court, the trial judge shall render its decision as soon as possible but not later than 60 days after the completion of the trial or hearing.

Adopted February 10, 2006, effective July 1, 2006.

Committee Comments Special Supreme Court Committee on Child Custody Issues

Rule 901 includes procedures that are designed and proven to expedite child custody proceedings.

Paragraph (a) requires strict compliance with statutory and rule based deadlines for child custody proceedings.

Paragraphs (b) and (c) concerning the setting of hearings and limitations on continuances should help to significantly reduce delays in child custody proceedings.

Paragraph (d) requires timely disposition of cases taken under advisement by the

trial court.

Rule 902. Pleadings

(a) Complaint or Petition. The initial complaint or petition in a child custody proceeding shall state (1) whether the child involved is the subject of any other child custody proceeding pending before another division of the circuit court, or another court or administrative body of Illinois or of any other state, an Indian tribe, or a foreign country and (2) whether any order affecting the custody or visitation of the child has been entered by the circuit court or any of its divisions, or by another court or administrative body of Illinois or of any other state, an Indian tribe, or a foreign country. If any child custody proceeding is pending with respect to the child, or any order has been entered with respect to the custody or visitation of the child, the initial complaint or petition shall identify the tribunal involved and the parties to the action.

(b) Verification of Initial Complaint or Petition. The plaintiff or petitioner in a child custody proceeding shall verify the pleadings required by paragraph (a) of this rule. If the plaintiff or petitioner is a public agency, the verification shall be on information and belief of the attorney filing the pleading and shall state that reasonable efforts were made to obtain all information relevant to the matters verified.

(c) Answer or Appearance. In a child custody proceeding the defendant's (or respondent's) answer, if required, shall include a verified disclosure of any relevant information known to the defendant (or respondent) regarding any pending proceedings or orders described in paragraph (a) of this rule. Any defendant or respondent who appears but is not required to file an answer in the child custody matter shall be questioned under oath by the court at the party's first appearance before the court regarding any proceedings or orders described in paragraph (a) of this rule.

(d) Continuing Duty. The parties have a continuing duty to disclose information relating to other pending child custody proceedings or any existing orders affecting the custody or visitation of the child, and shall immediately disclose to the court and the other parties to the proceeding any such information obtained after the initial pleadings, answer or appearance.

Adopted February 10, 2006, effective July 1, 2006.

Committee Comments
Special Supreme Court Committee on Child Custody Issues

The purpose of Rule 902 is to ensure that the trial court is aware of all custody proceedings and orders relating to the child who is before the court. The Special Committee found that child custody and visitation may be the subject of multiple proceedings and orders. Rule 902 addresses the problem of multiple proceedings that may occur intrastate and intra-circuit. Multiple proceedings may arise intra-circuit when parties file for relief under different statutory provisions (*e.g.*, an abuse case and a simultaneous guardianship case).

Paragraph (a) provides that the initial pleading of a party to a custody proceeding must include information regarding other pending custody proceedings and prior orders relating to custody or visitation. Information in paragraph (a) may be submitted to the court in a joint filing including the information required by section 209(a) of the Uniform Child-Custody and Enforcement Act (750 ILCS 36/209(a)).

Paragraph (b) requires that the pleadings required by paragraph (a) of this rule be verified by the plaintiff or petitioner in child custody proceedings.

Paragraph (c) provides that parties not required to file pleadings may be questioned by the trial court regarding other pending matters and prior orders.

Paragraph (d) provides that all parties have a continuing duty to disclose such matters to the court.

Requiring disclosure of other proceedings and orders should minimize the possibility of inconsistent child custody orders and help to prevent forum shopping.

Rule 903. Assignment and Coordination of Cases

Whenever possible and appropriate, all child custody proceedings relating to an individual child shall be conducted by a single judge. Each judicial circuit shall adopt a rule or order providing for assignment and coordination of child custody proceedings. Assignments in child custody proceedings shall be in accordance with the circuit rule or order then in force.

Adopted February 10, 2006, effective July 1, 2006.

Committee Comments
Special Supreme Court Committee on Child Custody Issues

Rule 903 encourages the assignment of all custody proceedings concerning a child to a single judge. The rule does not mandate consolidation of child custody proceedings, because consolidation may be inadvisable in certain cases. Moreover, in some counties mandatory consolidation may be impracticable because of the arrangement of courtrooms and facilities.

Rule 903 encourages the consolidation of cases by requiring that the judicial circuits adopt rules or orders concerning the assignment and coordination of child custody proceedings, and by providing that the assignment of child custody proceedings will be in accordance with those rules.

Adopted February 10, 2006, effective July 1, 2006.

Rule 904. Case Management Conferences

In child custody proceedings other than cases under articles II, III and IV of the Juvenile Court Act of 1987, and cases under the Illinois Marriage and Dissolution of Marriage Act and the Illinois Parentage Act of 1984 provided for under Part B of this article (see Rule 923), an initial case management conference pursuant to Rule 218 shall be held not later than 90 days after the petition or complaint has been served upon the respondent. If not previously resolved, the court shall address the appointment of a guardian *ad litem* or counsel for the child and counsel for any indigent party entitled to the assistance of appointed counsel at the initial case management conference.

Adopted February 10, 2006, effective July 1, 2006.

Committee Comments
Special Supreme Court Committee on Child Custody Issues

Case management conferences provide an effective way for the trial court to simplify issues and expedite cases. Rule 904 provides that an initial case management conference will be held within 90 days after the petition or complaint has been served upon the respondent in child custody proceedings not covered by other rules.

Special rules regarding conferences are included in Parts B and C of the Rule 900 series: Rule 923 addresses case management conferences in dissolution of marriage and paternity cases. Rule 942 authorizes the use of Court Family Conferences in abuse and neglect cases.

Rule 905. Mediation

(a) Each judicial circuit shall establish a program to provide mediation for cases involving the custody of a child or visitation issues (whether or not the parties have been married). In addition to the minimum requirements set forth in subparagraph (b)(2) of Rule 99, local circuit court rules for mediation in child custody and visitation cases shall address: (i) mandatory training for mediators; (ii) limitation of the mediation program to child custody and visitation issues; (iii) (unless otherwise provided for in this article) standards to determine which child custody and visitation issues should be referred to mediation and the time for referral, and (iv) excuse from referral to mediation for good cause shown. The fact that both parties agree that they do not want the matter to be referred to mediation does not constitute good cause shown. The immunity and approval requirements of subparagraph (b)(1) of Rule 99 shall apply to mediation programs for child custody and visitation matters.

(b) Each judicial circuit shall establish a program to provide mediation for dissolution of marriage and paternity cases involving the custody of a child or visitation issues (whether or not the parties have been married). In addition to the minimum requirements set forth in subparagraph (b)(2) of Rule 99, local circuit court rules for mediation in dissolution of marriage and paternity cases shall address: (i) mandatory expertise requirements of a mediator; (ii) mandatory training for mediators; (iii) limitation of the mediation program to child custody and visitation issues; and (iv) referral of child custody and visitation issues to mediation, pursuant to Rule 923(a)(3), unless the parties are excused for good cause shown. The fact that both parties agree that they do not want the matter to be referred to mediation does not constitute good cause shown. The immunity and approval requirements of subparagraph (b)(1) of Rule 99 shall apply to mediation programs for child custody and visitation matters.

(c) In addition to meeting the requirements of Rule 905(a) and (b), local circuit rules may also impose other requirements as deemed necessary by the individual circuits.

Adopted February 10, 2006, effective July 1, 2006.

Committee Comments
Special Supreme Court Committee on Child Custody Issues

The Committee believes mediation can be useful in nearly all contested custody proceedings. Mediation can resolve a significant portion of custody disputes and often has a positive impact even when custody issues are not resolved. The process of mediation focuses the parties' attention on the needs of the child and helps parties to be realistic in their expectations regarding custody.

Many counties and judicial circuits have had mandatory mediation programs in place in their domestic relations courts for years. Cook County and DuPage County have utilized mandatory mediation programs for more than a decade.

To date, these mandatory mediation programs have been implemented by the judicial circuits under the auspices of Rule 99, Mediation Programs.

Rule 905 requires each judicial circuit to establish a mediation program for child custody proceedings. Local circuit court rules will address the specifics of the mediation programs. The individual judicial circuits may implement rules which are particularly appropriate for them.

Paragraph (a) applies to cases involving custody or visitation issues, other than those arising in dissolution of marriage and paternity cases. It requires local circuit court rules to address mandatory training for mediators and limits the mediation program to issues involving child custody and visitation. Paragraph (a) also requires local circuit court rules to set standards to use in determining which child custody and visitation issues should be referred to mediation and also address when the referral will be made.

Paragraph (b) provides for mediation of disputed custody and visitation issues in dissolution of marriage and paternity cases, absent good cause shown. The timing and manner of referral to mediation in dissolution of marriage and paternity cases is provided for in Rule 923.

Rule 906. Attorney Qualifications and Education in Child Custody and Visitation Matters

(a) Statement of Purpose. This rule is promulgated to insure that counsel who are appointed by the court to participate in child custody and visitation matters, as delineated in Rule 900(b)(2), possess the ability, knowledge, and experience to do so in a competent and professional manner. To this end, each circuit court of this state

shall develop a set of qualifications and educational requirements for attorneys appointed by the court to represent children in child custody cases and guardianship cases when custody or visitation is an issue and shall further develop a plan for the procurement of qualified attorneys in accordance with the plan.

(b) Submission of Qualifications and Plan. The Chief Judge of a judicial circuit shall be responsible for the creation of the qualifications and Plan and for submitting them to the Conference of Chief Judges for approval. The Chief Judges of two or more contiguous judicial circuits may submit a Plan for the creation of a single set of qualifications and Plan encompassing those judicial circuits or encompassing contiguous counties within the circuits.

(c) Qualifications and Plan. The qualifications shall provide that the attorney is licensed and in good standing with the Illinois Supreme Court. Certification requirements may address minimum experience requirements for attorneys appointed by the court to represent minor children. In addition, the qualifications may include one or all of the following which are recommended: (1) Prior to appointment the attorney shall have 10 hours in the two years prior to the date the attorney qualifies for appointment in approved continuing legal education courses in the following areas: child development; roles of guardian *ad litem* and child representative; ethics in child custody cases; relevant substantive state, federal, and case law in custody and visitation matters; family dynamics, including substance abuse, domestic abuse, and mental health issues. (2) Periodic continuing education in approved child related courses shall be required to maintain qualification as an attorney eligible to be appointed by the court in child custody and visitation cases. (3) Requirements for initial *pro bono* representation. (4) Attorneys who work for governmental agencies may meet the requirements of this rule by attending appropriate in-house legal education classes.

(d) Conference of Chief Judges Review and Approval. The Conference of Chief Judges shall review and approve the Plan or may request that the Chief Judge modify the submitted list of qualifications and Plan. Upon approval, the Chief Judge of each circuit shall be responsible for administering the program and insuring compliance. An attorney approved to be appointed by the Court to participate in child custody and visitation matters under a Plan approved in one county or judicial circuit shall have reciprocity to participate in child custody and visitation matters in other counties and judicial circuits in Illinois.

Adopted February 10, 2006, effective July 1, 2006.

Committee Comments
Special Supreme Court Committee on Child Custody Issues

Paragraph (a) requires each judicial circuit to establish qualifications and educational requirements for attorneys who are appointed by a court to represent children in child custody proceedings. The circuits would also be required to establish a plan for procuring the services of qualified attorneys for child custody cases.

Paragraph (b) requires that attorney qualification and procurement plans be submitted to the Conference of Chief Circuit Judges for approval. It also provides that attorney qualification and procurement plans may be drafted to apply to contiguous circuits or to contiguous counties within two or more circuits.

Paragraph (c) specifies that attorneys appointed to represent children must be licensed and in good standing as attorneys. It also provides that the qualifications and standards must include a minimum experience requirement, and may include criteria concerning initial and continuing legal education requirements and requirements for initial *pro bono* representation. Attorneys approved under a circuit plan would be eligible for appointment in cases in other areas of the state on the basis of reciprocity.

In writing Rule 906, the Special Committee considered Rule 714, Capital Litigation Trial Bar, which imposes minimum requirements upon trial counsel in order to insure that counsel who participate in capital cases possess the ability, knowledge and experience to do so in a competent and professional manner. The Special Committee believes that cases involving child custody and visitation issues demand the same high standards of advocacy as do capital cases.

The Special Committee is mindful that many judicial circuits will find it very difficult to find funds to pay for the plans under which counsel are appointed. Ideally, the State would provide sufficient funding to reimburse the private attorneys who are appointed by the court. In the absence of such funding, the individual judicial circuits will need to be innovative in meeting the financial requirements of the plans. In addition to requiring the parties to pay for the appointed lawyer's services, the local rules could provide for the targeting of court filing fees. Voluntary *pro bono* service is also strongly encouraged.

Rule 907. Minimum Duties and Responsibilities of Attorneys for Minor Children

(a) Every child representative, attorney for a child and guardian *ad litem* shall adhere to all ethical rules governing attorneys in professional practice, be mindful of

any conflicts in the representation of children and take appropriate action to address such conflicts.

(b) Every child representative, attorney for a minor child and guardian *ad litem* shall have the right to interview his or her client(s) without any limitation or impediment. Upon appointment of a child representative, attorney for the child or guardian *ad litem*, the trial court shall enter an order to allow access to the child and all relevant documents.

(c) As soon as practicable, the child representative, attorney for the child or guardian *ad litem* shall interview the child, or if the child is too young to be interviewed, the attorney should, at a minimum, observe the child. The child representative, attorney for the child or guardian *ad litem* shall also take whatever reasonable steps are necessary to obtain all information pertaining to issues affecting the child, including interviewing family members and others possessing special knowledge of the child's circumstances.

(d) The child representative, attorney for the child or guardian *ad litem* shall take whatever reasonable steps are necessary to determine what services the family needs to address the custody dispute, make appropriate recommendations to the parties, and seek appropriate relief in court, if required, in order to serve the best interest of the child.

(e) The child representative, attorney for the child or guardian *ad litem* shall determine whether a settlement of the custody dispute can be achieved by agreement, and, to the extent feasible, shall attempt to resolve such disputes by an agreement that serves the best interest of the child.

Adopted February 10, 2006, effective July 1, 2006.

Committee Comments
Special Supreme Court Committee on Child Custody Issues

Rule 907 establishes minimum standards of practice for attorneys who represent children.

Paragraph (a) sets out the responsibility of an attorney representing a child in any capacity to act in accordance with the rules of ethics and avoid conflicts of interest.

Paragraphs (b) and (c) provide guidance on the attorney's essential duty of investigation: the duty to determine the child's circumstances and the family's needs. In aid of this duty, the rule provides specifically that an attorney has the right to interview a child client without limitation or impediment. Paragraph (b) also provides

that the trial court shall enter an order allowing the child representative, attorney for the child or guardian *ad litem* access to all relevant documents.

Paragraph (d) addresses advocacy. The attorney for a child is required to make appropriate recommendations to the parties, seek resolution by agreement where it is in the best interests of the child, and seek relief on behalf of the child in court, when needed.

The Special Committee is aware that the American Bar Association and the National Conference of Commissioners on Uniform State Laws have taken the position that there should be three distinct types of appointments: (1) a child's attorney, who provides independent legal counsel in the same manner as to an adult client; (2) a "best interest attorney, such as Illinois' child representatives, who provide independent legal services for the child's best interests but who does not make general "recommendations ; (3) a guardian *ad litem*, who gathers information for the court and helps identify other needed services for the child or family.

In its Standards of Practice for Attorneys Representing Children in Custody Cases, the ABA recommended that attorneys not serve as GALs unless they do so as would a non-lawyer. However, the Illinois Marriage and Dissolution of Marriage Act mandates that GALs appointed under the Act be attorneys and that they may actually act in *loco parentis* for the child. See 750 ILCS 5/506. It is the position of the Special Committee that none of these concerns require changes in the language of Rule 907 or any other rule.

Rule 908. Judicial Training on Child Custody Issues

(a) Meeting the challenge of deciding child custody cases fairly and expeditiously requires experience or training in a broad range of matters including, but not limited to: (1) child development, child psychology and family dynamics; (2) domestic violence issues; (3) alternative dispute resolution strategies; (4) child sexual abuse issues; (5) financial issues in custody matters; (6) addiction and treatment issues; (7) statutory time limitations; and (8) cultural and diversity issues.

(b) Judges should have experience or training in the matters described in paragraph (a) of this rule before hearing child custody cases. Before a judge is assigned to hear child custody cases, the Chief Judge of the judicial circuit should consider the judge's background, any prior training the judge has completed and any training that may be available to the judge before he or she will begin hearing child custody cases.

(c) Judges who, by specific assignment or otherwise, may be called upon to hear child custody cases shall attend a seminar approved by the Supreme Court concerning

matters described in paragraph (a) of this rule or related issues at least once every two years. Judges may meet this requirement by attending a seminar in person or by completing approved individual training through the Internet, computer training programs, video presentations, or other means. The Chief Judges of the judicial circuits should make reasonable efforts to ensure that judges have the opportunity to attend approved seminars to meet their responsibilities under this rule.

Adopted February 10, 2006, effective July 1, 2006.

Committee Comments
Special Supreme Court Committee on Child Custody Issues

Proposed Rule 908 recognizes the complexity of child custody cases and the broad range of experience and training that would be helpful to judges hearing these cases.

Paragraph (b) requires that chief judges consider a judge's experience and training before the judge is assigned to hear child custody cases. This provision does not establish a mandatory prerequisite to such an assignment.

Paragraph (c) requires that trial judges who will hear child custody cases attend a seminar on child custody matters at least once every two years. The proposed rule encourages personal attendance at seminars, but emphasizes that other forms of training may be used.

ARTICLE IX. CHILD CUSTODY PROCEEDINGS.

PART B – CHILD CUSTODY PROCEEDINGS UNDER THE ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT AND THE ILLINOIS PARENTAGE ACT OF 1984.

Rule 921. General Provisions

In addition to the rules in Part A of this article, the rules in this Part B shall apply to child custody proceedings filed under the Illinois Marriage and Dissolution of Marriage Act, and the Illinois Parentage Act of 1984.

Adopted February 10, 2006, effective July 1, 2006.

Committee Comments
Special Supreme Court Committee on Child Custody Issues

Rule 921 establishes the scope of Part B, which includes Rules 921 through 924. Rules 925 through 940 are Reserved. Rules 921 through 924 apply to child custody proceedings filed under the Illinois Marriage and Dissolution of Marriage Act, and the Illinois Parentage Act of 1984. The requirements of Rules 921 through 924 are in addition to the requirements of Part A found in Rules 900 through 908 as applicable.

Rule 922. Time Limitations

All child custody proceedings under this rule in the trial court shall be resolved within 18 months from the date of service of the petition or complaint to final order. In the event this time limit is not met, the trial court shall make written findings as to the reason(s) for the delay. The 18-month time limit shall not apply if the parties, including the attorney representing the child, the guardian *ad litem* or the child representative, agree in writing and the trial court makes a written finding that the extension of time is for good cause shown. In the event the parties do not agree, the court may consider whether an extension of time should be allowed for good cause shown.

Adopted February 10, 2006, effective July 1, 2006.

Committee Comments
Special Supreme Court Committee on Child Custody Issues

Rule 922 provides that custody matters in dissolution of marriage and paternity cases must be resolved within 18 months. Written findings are required if the deadline is not met, and extensions of the time limit may only be granted for good cause shown, on written finding by the trial court.

Rule 923. Case Management Conferences

(a) Initial Conference. In a child custody proceeding under this part, an initial

case management conference pursuant to Rule 218 shall be held not later than 90 days after service of the petition or complaint is obtained. In addition to other matters the court may choose to address, the initial conference shall cover the following issues:

(1) *Parenting Education.* The parents shall show proof of completion of an approved parenting education program as required by Rule 924, provide a fixed schedule for compliance, or show cause to excuse compliance;

(2) *Custody and Parenting Plan.* The parents shall provide the court with an agreed order regarding custody and an agreed parenting plan, if there is an agreement;

(3) *Mediation.* If there is no agreement regarding custody or a parenting plan or both, the court shall schedule the matter for mediation in accordance with Rule 905(b) and shall advise each parent of the responsibilities imposed upon them by the pertinent local court rules.

(b) A full case management conference shall be held not later than 30 days after mediation has been completed. In addition to other matters the court may choose to address at the conference, and if the court has not appointed counsel previously, the court shall address whether to appoint an attorney for the child or a guardian *ad litem* or a child representative in accordance with section 506 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/506).

Adopted February 10, 2006, effective July 1, 2006.

Committee Comments
Special Supreme Court Committee on Child Custody Issues

Paragraph (a) provides that an initial case management conference is required within 90 days after service of a petition or complaint is obtained in a dissolution of marriage case involving a child or in a paternity case. At the initial conference the trial court will ensure compliance with parenting education requirements (Rule 924) and determine whether the parents have agreed to a custody and parenting plan. Parents not in agreement regarding custody and parenting plan issues at the time of the initial case management conference will be referred to mediation. The trial court may also use the initial case management conference to address other matters it deems proper.

Each judicial circuit which currently has a mediation program has a provision in their local circuit court rules explaining how parents whose children are the subject of a custodial dispute must comply with the circuit court rules. These rules vary from judicial circuit to judicial circuit. In Cook County, parents are required to attend the

mediation session but, if they do not agree with the mediator's decision, the parents merely bring this fact to the attention of the circuit court. In Du Page County, if the parents do not agree on child custody after they have completed the requirements of the mediation program, they are required to see a clinical psychologist for a mandatory evaluation. Another difference between the judicial circuits is how the costs of mediation are paid. While many mediation programs impose costs, the Cook County Circuit Court's Marriage and Family Counseling Service is free.

Paragraph (a)(3) supports the Special Committee's goal of allowing the individual judicial circuits to adopt rules and set up programs which best suit that circuit's needs.

Paragraph (b) provides that in cases referred to mediation under the rule, a full case management conference is required within 30 days after mediation is completed. At the full case management conference, the court will consider, *inter alia*, the appointment of counsel for the child as provided in section 506 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/506).

Rule 924. Parenting Education Requirement

(a) Program. Each circuit or county shall create or approve a parenting education program consisting of at least four hours covering the subjects of visitation and custody and their impact on children.

(b) Mandatory Attendance. Except when excused by the court for good cause shown, all parties shall be required to attend and complete an approved parenting education program as soon as possible, but not later than 60 days after an initial case management conference. In the case of a default or lack of jurisdiction over the respondent, only the petitioning party is required to attend but if the respondent later enters an appearance or participates in postjudgment proceedings, then the party who has not attended the program shall attend. The court shall not excuse attendance unless the reason is documented in the record and a finding is made that excusing one or both parents from attendance is in the best interests of the child.

(c) Sanctions. The court may impose sanctions on any party willfully failing to complete the program.

Adopted February 10, 2006, effective July 1, 2006.

Committee Comments
Special Supreme Court Committee on Child Custody Issues

Parenting education can have a very positive impact on the outcome of a child custody proceeding. Parenting education encourages parents to think about the impact of their actions on their children and teaches parents to deal with adult problems in ways that avoid harm to their children.

Paragraph (a) requires each judicial circuit or county to create or approve a parenting education program and sets out the minimum requirements of such a program. Individual judicial circuits or counties may permit the circuit courts to impose additional educational requirements on one or all of the parties.

Paragraph (b) requires parenting education for all dissolution of marriage cases involving a child and all parentage cases, absent good cause shown. Compliance with the parenting education requirement will be reviewed at the initial case management conference. Parents are expected to complete parenting education not later than 60 days after the initial case management conference.

Paragraph (c) provides that sanctions may be imposed on parties who willfully fail to comply with the parenting education requirement.

ARTICLE IX. CHILD CUSTODY PROCEEDINGS

**PART C – CHILD CUSTODY PROCEEDINGS UNDER ARTICLES II, III
AND IV OF THE JUVENILE COURT ACT OF 1987**

Rule 941. General Provisions

In addition to the rules in part A of this article, the rules in this part C shall apply to child custody proceedings filed under articles II, III and IV of the Juvenile Court Act of 1987.

Adopted February 10, 2006, effective July 1, 2006.

Rule 942. Court Family Conferences

(a) Abuse Neglect, and Dependency Cases. In cases under articles II, III, and IV of the Juvenile Court Act of 1987, on motion of any party or on its own motion, the court may in its discretion hold a Court Family Conference in accordance with this rule.

(b) Initial Conference

(1) *Time.* At the temporary custody hearing, or as soon thereafter as possible, the court shall set the date and time for an initial Court Family Conference. The initial Court Family Conference shall be held not less than 56 days after the Temporary Custody Hearing.

(2) *Parties.* All parties shall appear at the initial Court Family Conference except the minor, who may appear in person or through a guardian *ad litem* or his or her attorney. The caseworker assigned to the case must also appear. If no party objects, a foster parent may participate in the Conference. If any party objects, the court in its discretion may exclude the foster parent but the foster parent retains the right to be heard by the court before the end of the proceedings. The court may in its discretion allow other persons interested in the minor to attend the Conference at the request of the child or a parent. The failure of any party (with the exception of the child or his or her guardian *ad litem* or attorney) to appear shall not prevent the court from proceeding with the Court Family Conference.

(3) *Record.* If all parties are present for the initial Court Family Conference, the court shall conduct the Conference off the record, and at the conclusion of the Conference summarize the Conference for the record. If the parents are not present, the Court shall conduct the entire Conference on the record.

(4) *Disclosure of Service Plan.* The Illinois Department of Children and Family Services or its assigns shall provide the most recent service plan to all parties seven days before the initial Court Family Conference. In the event that the service plan has not been filed with the court prior to the initial Court Family Conference, the court shall convene the initial Court Family Conference and discussion shall focus on services that would appropriately be included in the plan. Such discussion should ensure that the family and the caseworker have a clear understanding of the expectations of the court.

(5) *Issues.*

(A) The discussion at the initial Court Family Conference shall focus on eliminating the causes or conditions that contributed to the findings of probable cause and, if applicable, the existence of urgent and immediate

necessity. If possible, at the conclusion of the discussion the court shall set a target date for return home or case closure. If the court determines that setting a target date for return home or case closure is not possible or is premature, the court, during the discussion, shall make clear to the parties and the caseworker what needs to be accomplished before the court will consider setting a target return home date.

(B) The discussion at the initial Court Family Conference shall include the services contained in the service plan for the parents and the child. The needs of the child and visitation plans between the parent and the child and between the child and any siblings shall also be discussed.

(C) The discussion shall include any other matters that the court, in its discretion, deems relevant.

(6) *Other Issues.* At the initial Court Family Conference, the court may address case management issues that would be appropriate for consideration at a subsequent Court Family Conference.

(7) *Order.* At the conclusion of the initial Court Family Conference, the court shall enter an order approving the service plan or setting forth any changes the court requires to be made to the service plan.

(c) Subsequent Court Family Conferences. Court Family Conferences may be held after the initial Conference as the court deems necessary. At a subsequent Court Family Conference, the court has the authority to make orders relating to case management as is provided for in other civil cases by Rule 218. In the court's discretion, matters considered at the initial Conference may be reviewed at any subsequent Conference.

(d) Concurrent Hearings. The initial Court Family Conference may be held concurrently with any hearing held within the required time. Subsequent Court Family Conferences may be held concurrently with any other hearing on the case.

(e) Confidentiality. With the exception of statements that would support new allegations of abuse or neglect, statements made during an off the record portion of an initial or subsequent Court Family Conference shall be inadmissible in any administrative or judicial proceeding. If the court refers to any specific statements made by the parents in its summary of the off the record portion of the Conference or in the order entered following the Conference, upon objection of the parents, such references shall be stricken.

Adopted February 10, 2006, effective July 1, 2006.

Committee Comments
Special Supreme Court Committee on Child Custody Issues

A Court Family Conference is intended to be an opportunity for the trial court, the parents, the caseworker and the child or child's representative to discuss the court process, and the meaning, intent and practicality of the service plan; to discuss and ensure the safety of the child; to cooperatively discuss goals; and ultimately, to expedite resolution of the case through reunification of the family or other appropriate action. Paragraph (a) authorizes the use of Court Family Conferences in abuse, neglect and dependency cases.

Paragraph (b)(1) provides that a Court Family Conference will be held not less than 56 days after the Temporary Custody Hearing in cases when the court determines it is appropriate to do so.

Paragraph (b)(2) provides that all parties are required to appear at a Court Family Conference, except the minor, who may appear through a guardian *ad litem* or through counsel. The assigned caseworker must also appear, and a foster parent may appear, absent objection by a party.

Paragraph (b)(3) provides that statements made at Court Family Conferences are confidential and may not be used subsequently, except for statements that may provide the basis for a new allegation of abuse or neglect. The Court Family Conference will be off the record unless the parents are not present. Upon completion of an off the record Conference, the court will summarize the matter for the record.

Paragraph (b)(4) provides that the most recent service plan is to be provided to the parties seven days prior to the Conference. At the initial Conference the service plan is discussed, with the purpose of ensuring that the caseworker and the parents clearly understand the expectations of the court.

Paragraph (b)(5) addresses the issues which should be discussed at the Court Family Conference, with an emphasis on the parties, the court and the service providers sharing information in an open and expeditious manner.

Paragraph (b)(7) provides that the court may approve the service plan or order changes to the plan at the conclusion of an initial Court Family Conference.

Paragraph (c) allows subsequent Court Family Conferences, and the combination of initial or subsequent Court Family Conferences with other hearings in the case. Subsequent Court Family Conferences may address any issues that could be considered in a case management conference under Rule 218.

Paragraph (d) provides that Court Family Conferences may be held at the same time that the court conducts any other hearing. As the rules of evidence apply to

hearings, but do not apply to Court Family Conferences, it is incumbent upon the circuit court to only consider properly admissible evidence when determining the result of the hearing.

In order to promote an open and honest discourse at an initial or subsequent Court Family Conference, Paragraph (e) provides that statements made during the off the record portion of the Conference shall be inadmissible in any administrative or judicial proceeding. The only exception to this confidentiality requirement is when the statements at the Conference would support new allegations of abuse or neglect.