

**Proposal 09-02 (P.R. 0167)**  
**Amends Supreme Court Rules 304 and 306A**  
**Offered by the Special Supreme Court Committee on Child Custody**

**Rule 304. Appeals from Final Judgments That Do Not Dispose of an Entire Proceeding**

**(a) Judgments As To Fewer Than All Parties or Claims – Necessity for Special Finding.**

If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. Such a finding may be made at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party. The time for filing a notice of appeal shall be as provided in Rule 303. In computing the time provided in Rule 303 for filing the notice of appeal, the entry of the required finding shall be treated as the date of the entry of final judgment. In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights and liabilities of all the parties.

**(b) Judgments and Orders Appealable Without Special Finding.** The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule:

- (1) A judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party.
- (2) A judgment or order entered in the administration of a receivership, rehabilitation, liquidation, or other similar proceeding which finally determines a right or status of a party and which is not appealable under Rule 307(a).
- (3) A judgment or order granting or denying any of the relief prayed in a petition under section 2-1401 of the Code of Civil Procedure.
- (4) A final judgment or order entered in a proceeding under section 2-1402 of the Code of Civil Procedure.
- (5) An order finding a person or entity in contempt of court which imposes a monetary or other penalty.
- (6) A custody judgment, even if the judgment leaves pending other matters, such as support, property issues or decisions affecting the rights of persons other than the child; judgments modifying child custody where a change of custody has been granted; judgments of adoption; and final orders determining parental rights.

The time in which a notice of appeal may be filed from a judgment or order appealable under this Rule 304(b) shall be as provided in Rule 303.

## Committee Comments

Paragraph (b)(6), adopted pursuant to the authority given to the Supreme Court by the Judicial Article effective \_\_\_\_\_, expedites appeals in child custody cases even where financial or other dissolution matters are still pending. The rule is based upon the promotion of stability for the affected children and their families as well as to alleviate the effect of uncertainty among the parties. This modification is also consistent with Rule 306A.

### Paragraph (b)

The addition of subparagraph (6) ameliorates current practice. See *In Re Marriage of Leopando*, 96 Ill.2d 114, 449 N.E.2d 137 (1983) (Illinois Supreme Court held that issues raised in a dissolution of marriage case are not separate claims and therefore not appealable under Rule 304(a)); and *In re Marriage of Sproat*, 357 Ill. App. 3d 880, 830 N.E.2d 843 (2d Dist.2005) (Illinois Appellate Court held that custody orders after a full trial are not appealable where financial or other dissolution matters are still pending.) The adoption of subparagraph (6) clearly indicates the intent of the Supreme Court to expand categories of appealable orders.

The term judgment is substituted, when appropriate, in this and other rules, to conform with the language in §610 of the Illinois Marriage and Dissolution of Marriage Act, the Adoption Act, and the Illinois Parentage Act of 1984 and to eliminate possible confusion.

### Rule 306A. Expedited Appeals in Child Custody Cases.

(a) The expedited procedures in this rule shall apply in the following child custody cases: (1) ~~initial final child custody orders judgments, even if the judgment leaves pending other matters,~~ such as support, property issues or decisions affecting the rights of persons other than the child, (2) ~~orders judgments~~ modifying child custody where a change of custody has been granted, (3) ~~final orders judgments~~ of adoption and (4) final orders ~~terminating determining~~ parental rights. If the appeal is taken from a judgment or order affecting other matters, such as support, property issues or decisions affecting the rights of persons other than the child, the reviewing court may handle all pending issues using the expedited procedures in this rule, unless doing so will delay decision on the child custody appeal. In any other child custody cases in which the best interests of the child is involved including orders of visitation, guardianship standing to pursue custody and interim orders of custody, a party may file a petition in accordance with the rules seeking leave to appeal. Upon granting of the petition by the appellate court, all said proceedings shall be subject to procedures set forth in this rule.

(b) The notice of appeal, docketing statement, briefs and all other notices, motions and pleadings filed by any party in relation to an appeal involving child custody shall include the following statement in bold type on the top of the front page: **THIS APPEAL INVOLVES A**

**QUESTION OF CHILD CUSTODY, ADOPTION, TERMINATION OF PARENTAL RIGHTS OR OTHER MATTER AFFECTING THE BEST INTERESTS OF A CHILD.**

(c) In addition to the service required by Rule 303(c), a party filing notice of appeal in a child custody case shall, within seven days, serve copies of the same on the trial judge who entered the judgment or order appealed and the office of the chief judge of the circuit in which the judgment or order on appeal was entered.

(d) On receipt of the notice of appeal in a child custody case, the trial judge shall set a status hearing within 30 days of the date of filing of the notice of appeal to determine the status of the case, including payments of required fees to the clerk of the circuit court and court reporting personnel as defined in Rule 46 for the preparation of the transcript of proceedings, and take any action necessary to expedite preparation of the record on appeal and the transcript of the proceedings. The trial court shall have continuing jurisdiction for the purpose of enforcing the rules for preparation of the record and transcript. The trial court may request the assistance of the chief judge to resolve filing delays, and the chief judge shall assign or reassign the court reporting personnel's work as necessary to ensure compliance with the filing deadlines.

(e) The record on appeal and the transcript of proceedings in a child custody case shall be filed no later than 35 days after the filing of the notice of appeal. Any request for extension of the time for filing shall be accompanied by an affidavit of the court clerk or court reporting personnel stating the reason for the delay, and shall be served on the trial judge and the chief judge of the circuit. Lack of advance payment shall not be a reason for noncompliance with filing deadlines for the record or transcript. Any subsequent request for continuance shall be made to the appellate court by written notice and motion to all parties in accordance with rules.

(f) Except for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal.

(g) The appellate court of each district shall by administrative order or rule adopt mandatory procedures to ensure completion of child custody appeals within the time specified in paragraph (f). The order or rule may include provisions regarding the use of memoranda in lieu of briefs, expedited schedules and deadlines, provisions for the separation of child custody issues from other issues on appeal and any other procedures necessary to fair and timely disposition of the case. The clerk of the appellate court shall be responsible for seeing that the accelerated docket is maintained and for advising the court of any noncompliance with the rules of the court concerning timely filing.

(h) Requests for continuance are disfavored and shall be granted only for compelling circumstances. The appellate court may require personal appearance by the attorney or party requesting the continuance as provided by local rule.

(i) This rule shall apply to all orders in which a notice of appeal is filed after its effective date.

## Committee Comments

This rule, adopted pursuant to the authority given to the Supreme Court by the Judicial Article effective July 1, 2004, expedites appeals in child custody cases. The rule is based upon the promotion of stability for the affected children and their families as well as to alleviate the effect of uncertainty among the parties.

### Paragraph (a)

Paragraph (a) was accordingly revised effective \_\_\_\_\_ to expedite appeals in child custody cases where financial or other dissolution matters are still pending. This change ameliorates current practice. See *In re Marriage of Leopando*, 96 Ill.2d 114, 449 N.E.2d 137 (1983), (Illinois Supreme Court held that issues raised in a dissolution of marriage case are not separate claims and therefore not appealable under Rule 304 (a)); and *In re Marriage of Sproat*, 357 Ill. App. 3d 880, 830 N.E.2d 843 (2d Dist. 2005 (Illinois Appellate Court held that custody orders after a full trial are not appealable where financial or other dissolution matters are still pending.) The revision clearly indicates the intent of the Supreme Court to expand categories of appealable orders. This modification is also consistent with Rule 304(b)(6).

The term judgment is substituted, when appropriate, in this and other rules, to conform with the language in §610 of the Illinois Marriage and Dissolution of Marriage Act, the Adoption Act, and the Illinois Parentage Act of 1984 and to eliminate possible confusion.