

**Proposal 05-02 (P.R. 0136)**  
**Amends Supreme Court Rule 303**  
**Offered by Justice Robert W. Cook, Illinois Appellate Court, Fourth District**

\*\*Please note: text contains rule amendments filed on October 14, 2005, and effective January 1, 2006.

**Rule 303. Appeals from Final Judgments of the Circuit Court in Civil Cases**

**(a) Time; Filing; Transmission of Copy.**

(1) Except as provided in paragraph (b) below, the notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order, irrespective of whether the circuit court had entered a series of final orders that were modified pursuant to postjudgment motions. A judgment or order is not final and appealable while a Rule 137 claim remains pending unless the court enters a finding pursuant to Rule 304(a).

(2) When a timely postjudgment motion has been filed by any party, whether in a jury case or a nonjury case, a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion shall have no effect and shall be withdrawn by the party who filed it, by moving for dismissal pursuant to Rule 309. This is so whether the timely postjudgment motion was filed before or after the date on which the notice of appeal was filed. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the postjudgment motion, as provided in subparagraph (a)(1) of this rule. No request for reconsideration of a ruling on a postjudgment motion will toll the running of the time within which a notice of appeal must be filed under this rule. A party who filed a premature notice of appeal will not be required to pay a filing fee for a future appeal in the same case if, at the time of filing the future appeal, the party presents the receipt for the fee paid for filing the premature notice of appeal and a copy of the circuit court order dismissing the premature appeal.

(3) If a timely notice of appeal is filed and served by a party, any other party, within 10 days after service upon him or her, or within 30 days from the entry of the judgment or order being appealed, or within 30 days of the entry of the order disposing of the last pending postjudgment motion, whichever is later, may join in the appeal, appeal separately, or cross-appeal by filing a notice of appeal, indicating which type of appeal is being taken.

(4) Within five days after the filing of a notice of appeal, or an amendment of a notice of appeal filed in the circuit court pursuant to subparagraph (b)(4) of this rule, the clerk of the circuit court shall transmit to the clerk of the court to which the appeal is being taken a copy of the notice of appeal or of the amendment.

(5) Where a notice of appeal is properly filed, but is rendered premature by the subsequent filing of a post-trial motion or claim, the appeal shall not be dismissed after the time for appeal has run, unless such dismissal would achieve substantial justice between the parties.

(b) - (e) [no changes]

### **Committee Comment**

Paragraph (5) is intended to address concerns raised in cases such as John G. Phillips & Associates v. Brown, 197 Ill. 2d 337, 757 N.E.2d 875 (2001). The policy against piecemeal appeals normally warrants dismissal of premature appeals, but, where the time for appeal has expired in the meantime, refiling may be impossible. In many cases there is no reason for such a harsh sanction; the opponent has had timely notice of the appeal and has not been prejudiced. The question whether a particular “claim” is part of the same civil action or is a claim made after the principal action has been decided is often a difficult one. See Dewan v. Ford Motor Co., 343 Ill. App. 3d 1062, 799 N.E.2d 391 (2003); In re Marriage of King, 208 Ill. 2d 332, 802 N.E.2d 1216 (2003) (judgment of dissolution is final and appealable despite the continued pendency of the issue of attorney fees under 750 ILCS 5/508 (c) (5) (West 2000)).