

Proposal 08-02 (P.R. 0161)
Amends Supreme Court Rules 306, 306A, 307, 308, 311, 901, and 922
Offered by the Supreme Court Rules Committee

Rule 306. Appeals from Orders of the Circuit Court Granting New Trials and Granting or Denying Certain Motions. Interlocutory Appeals by Permission.

(a) [No changes.]

(b) Procedure for Petitions Under Subsection (a)(5). The procedure for petitions for leave to appeal orders under paragraph (a)(5) shall be as provided in this paragraph (b). The procedure for petitions for leave to appeal other orders under paragraph (a) shall be provided in paragraphs (c) through (i).

(1) *Petition; Service; Record.* Unless another form is ordered by the Appellate Court, review of an order affecting the care and custody of an unemancipated minor as authorized in paragraph (a)(5) shall be by petition filed in the Appellate Court. ~~A notice of interlocutory appeal substantially conforming to the notice of appeal in other cases shall also be filed within the time allowed by this paragraph for filing the petition.~~ The petition shall be in writing and shall state the relief requested. An appropriate supporting record shall accompany the petition, which shall include ~~the notice of interlocutory appeal,~~ the order appealed from or the proposed order, and any supporting documents or matters of record necessary to the petition. The supporting record must be authenticated by the certificate of the clerk of the trial court or by the affidavit of the attorney or party filing it. The petition, supporting record and the petitioner's legal memorandum, if any, shall be filed in the Appellate Court within five business days of the entry or denial of the order from which review is being sought, with proof of personal service or facsimile service as provided in Rule 11.

(2) *Legal Memoranda.* The petitioner may file a memorandum, not exceeding 15 typewritten pages, with the petition. The respondent or any other party or person entitled to be heard in the case may file, with proof of personal service or facsimile service as provided in Rule 11, a responding memorandum within five business days following service of the petition and petitioner's memorandum. A memorandum of the respondent or other party may not exceed 15 typewritten pages.

(3) *Replies; Extensions of Time.* Except by order of court, no replies will be allowed and no extension of time will be allowed.

(4) *Variations by Order of the Court.* The Appellate Court may, if it deems it appropriate, order a different schedule, or order that no memoranda be filed, or order that other materials need not be filed. ~~If the petition is allowed, the court may order the filing of such additional material from the trial court and the parties as may be necessary to a full determination of the case.~~

(5) Procedure if Petition is Allowed. If the petition is allowed, all proceedings shall be subject to the expedited procedures set forth in Rule 311(a). The circuit court and the opposing parties shall also be served with copies of the order granting the petition.

(c) Procedure for All Other Petitions Under this Rule.

(e) (1) *Petition.* The petition shall contain a statement of the facts of the case, supported by reference to the supporting record, and of the grounds for the appeal. An original and three copies of the petition (or original and five copies in workers' compensation cases arising under Rule 22(g)) shall be filed in the Appellate Court in accordance with the requirements for briefs within 30 days after the entry of the order. A supporting record conforming to the requirements of Rule 328 shall be filed with the petition.

(f) (2) *Answer.* Any other party may file an original and three copies of an answer (or original and five copies in workers' compensation cases arising under Rule 22(g)) within 21 days of the filing of the petition, together with a supplementary supporting record conforming to Rule 328 consisting of any additional parts of the record the party desires to have considered by the Appellate Court. No reply will be received except by leave of court or a judge thereof.

(e) (3) *Appendix to Petition; Abstract.* The petition shall include, as an appendix, a copy of the order appealed from, and of any opinion, memorandum, or findings of fact entered by the trial judge, and a table of contents of the record on appeal in the form provided in Rule 342(a). If the Appellate Court orders that an abstract of the record be filed, it shall be in the form set forth in Rule 342(b) and shall be filed within the time fixed in the order.

(f) (4) *Extensions of Time.* The above time limits may be extended by the reviewing court or a judge thereof upon notice and motion, accompanied by an affidavit showing good cause, filed before expiration of the original or extended time.

(g) (5) *Stay; Notice of Allowance of Petition.* If the petition is granted, the proceedings in the trial court are stayed. Upon good cause shown, the Appellate Court or a judge thereof may require the petitioner to file an appropriate bond. Within 48 hours after the granting of the petition, the clerk shall send notice thereof to the clerk of the circuit court.

(h) (6) *Additional Record.* If leave to appeal is allowed, any party to the appeal may request that additional portions of the record on appeal be prepared as provided in Rule 321 *et seq.*, or the court may order the appellant to file the record, which shall be filed within 35 days of the date on which such leave was allowed. The filing of an additional record shall not affect the time for filing briefs under this rule.

(†) (7) *Briefs.* A party may allow his or her petition or answer to stand as his or her brief or may file a further brief in lieu of or in addition thereto. If a party elects to allow a petition or answer to stand as a brief, he or she must notify the other parties and the Clerk of the Appellate Court on or before the due date of the brief and supply the court with the requisite number of briefs required by Rule 344. If the appellant elects to file a further brief, it must be filed within 35 days from the date on which leave to appeal was granted. The appellant's brief, and other briefs if filed, shall conform to the schedule and requirements as provided in Rules 341 through 344. Oral argument may be requested as provided in Rule 352(a).

Rule 306A. Moved to Rule 311(a) and Reserved

Rule 307. Interlocutory Appeals as of Right

(a) Orders Appealable; Time. An appeal may be taken to the Appellate Court from an interlocutory order of court:

(1) granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction;

(2) appointing or refusing to appoint a receiver or sequestrator;

(3) giving or refusing to give other or further powers or property to a receiver or sequestrator already appointed;

(4) placing or refusing to place a mortgagee in possession of mortgaged premises;

(5) appointing or refusing to appoint a receiver, liquidator, rehabilitator, or other similar officer for a bank, savings and loan association, currency exchange, insurance company, or other financial institution, or granting or refusing to grant custody of the institution or requiring turnover of any of its assets;

~~(6) terminating parental rights or granting, denying or revoking temporary commitment in adoption cases;~~

(†) (6) determining issues raised in proceedings to exercise the right of eminent domain under section 7--104 of the Code of Civil Procedure, but the procedure for appeal and stay shall

be as provided in that section.

Except as provided in paragraph (b) and (d), the appeal must be perfected within 30 days from the entry of the interlocutory order by filing a notice of appeal designated "Notice of Interlocutory Appeal" conforming substantially to the notice of appeal in other cases. The record must be filed in the Appellate Court within the same 30 days unless the time for filing the record is extended by the Appellate Court or any judge thereof.

(b) - (d) [No changes.]

Rule 308. Interlocutory Appeals by Permission Certified Questions

(a) - (e) [No changes.]

Rule 311. Accelerated Docket

(a) Mandatory Accelerated Disposition of Child Custody Appeals. The expedited procedures in this rule subsection shall apply ~~in the following to appeals from final orders in child custody cases and to interlocutory appeals in child custody cases which have been granted pursuant to Rule 306(a)(5).~~ ~~:(1) initial final child custody orders, (2) orders modifying child custody where a change of custody has been granted, (3) final orders of adoption and (4) final orders terminating 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 interest of a 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)~~ (1) Special Caption. The notice of appeal or petition for leave to 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)~~ (2) Service Upon the Circuit Court. 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. Where a 306(a)(5)

petition for leave to appeal has been granted, the appellant shall, within seven days, serve copies of the order granting the petition upon the trial judge who entered the judgment or order appealed from and the office of the chief judge of the circuit in which the judgment or order on appeal was entered.

(d) (3) *Status Hearing in Circuit Court.* On receipt of the notice of appeal or order granting leave to appeal under Rule 306(a)(5) 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 or order granting leave to 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) (4) *Record.* 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 or granting of the Rule 306(a)(5) petition for leave to 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) (5) *Deadline for Decision.* Except for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal or granting of the Rule 306(a)(5) petition for leave to appeal.

(g) (6) *Local Rules.* 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 a 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) (7) *Continuances Disfavored.* 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.

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

(b) Discretionary Acceleration of Other Appeals. Any time after the docketing statement is filed in the reviewing court, the court, on its own motion, or on the motion of any party, for good cause shown, may place the case on an accelerated docket. The motion shall be supported by an affidavit stating reasons why the appeal should be expedited. If warranted by the circumstances, the court may enter an order accepting a supporting record prepared pursuant to Rule 328, consisting of those lower court pleadings, reports of proceedings or other materials that will fully present the issues. In its discretion the court may accept memoranda in lieu of formal briefs. The court may then enter an order setting forth an expedited schedule for the disposition of the appeal.

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.

(e) Appeals. Appeals from orders entered in child custody proceedings shall be pursuant

to the applicable civil appeals rules. All such proceedings shall be expedited according to Rule 311(a).

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's 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.