

M.R. 3140

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

Order entered September 30, 2020.

(Deleted material is struck through, and new material is underscored.)

Effective October 1, 2020, Illinois Supreme Court Rules 212, 306, 315, 316, 318, 341, 368, and 705 are amended, as follows.

**Amended Rule 212**

**Rule 212. Use of Depositions**

**(a) Purposes for Which Discovery Depositions May Be Used.** Discovery depositions taken under the provisions of this rule may be used only:

- (1) for the purpose of impeaching the testimony of the deponent as a witness in the same manner and to the same extent as any inconsistent statement made by a witness;
- (2) as a former statement, pursuant to Illinois Rule of Evidence 801(d)(2);
- (3) if otherwise admissible as an exception to the hearsay rule;
- (4) for any purpose for which an affidavit may be used; or
- (5) upon reasonable notice to all parties, as evidence at trial or hearing against a party who appeared at the deposition or was given proper notice thereof, if the court finds that the deponent is not a controlled expert witness, the deponent's evidence deposition has not been taken, and the deponent is unable to attend or testify because of death or infirmity, and if the court, based on its sound discretion, further finds such evidence at trial or hearing will do substantial justice between or among the parties.

**(b) Use of Evidence Depositions.** The evidence deposition of a physician or surgeon may be introduced in evidence at trial on the motion of either party regardless of the availability of the deponent, without prejudice to the right of either party to subpoena or otherwise call the physician or surgeon for attendance at trial. All or any part of other evidence depositions may be used for any purpose for which a discovery deposition may be used, and may be used by any party for any purpose if the court finds that at the time of the trial:

- (1) the deponent is dead or unable to attend or testify because of age, sickness, infirmity or imprisonment;
- (2) the deponent is out of the county, unless it appears that the absence was procured by the party offering the deposition, provided, that a party who is not a resident of this State may introduce his or her own deposition if he or she is absent from the county; or

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(3) the party offering the deposition has exercised reasonable diligence but has been unable to procure the attendance of the deponent by subpoena; or finds, upon notice and motion in advance of trial, that exceptional circumstances exist which make it desirable, in the interest of justice and with due regard for the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

**(c) Partial Use.** If only a part of a deposition is read or used at the trial by a party, any other party may at that time read or use or require him or her to read any other part of the deposition which ought in fairness to be considered in connection with the part read or used.

**(d) Use After Substitution, Dismissal, or Refiling Remandment.** Substitution of parties does not affect the right to use depositions previously taken. If any action in any court of this State ~~or any other jurisdiction of the United States~~ is dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, ~~or if any action is remanded by a court of the United States to a court of this State,~~ all depositions lawfully taken and duly filed in the former action, ~~or before remandment,~~ may be used as if taken in the later action, ~~or after remandment.~~

**(e) Depositions Taken in Other Jurisdictions.** A deposition taken in any action in another jurisdiction of the United States that involves the same subject matter and the same parties or their representatives or successors in interest as an action brought in this State may be used as if taken in the action brought in this State. If the deposition was or would be admissible as substantive evidence at trial in the other jurisdiction, the deposition is deemed an evidence deposition. If not, the deposition is deemed a discovery deposition. By pretrial order, the court may require a party to give other parties reasonable notice of its intent to use a deposition taken in another jurisdiction.

Amended February 19, 1982, effective April 1, 1982; amended May 28, 1982, effective July 1, 1982; amended March 1, 2001, effective immediately; amended March 28, 2002, effective July 1, 2002; amended December 8, 2010, effective January 1, 2011; amended Sept. 26, 2019, eff. Oct. 1, 2019; amended Sept. 30, 2020, eff. Oct. 1, 2020.

Committee Comments  
(January 1, 2011)

Paragraph (a)

The Committee was prompted to examine this issue by the decision in *Berry v. American Standard, Inc.*, 382 Ill. App. 3d 895 (5th Dist. 2008). The Committee believes that a trial court should have the discretion under subparagraph (a)(5) to permit the use of a party's discovery deposition at trial. It appears that there may be rare, but compelling, circumstances under which a party's discovery deposition should be permitted to be used. In the Committee's view, *Berry* presents such circumstances. Given that in most cases counsel will have the opportunity to preserve a party's testimony via an evidence deposition, it is expected that the circumstances that would justify use of a discovery deposition would be extremely limited.

This amendment applies to cases filed on or after the effective date.

## Amended Rule 306

### **Rule 306. Interlocutory Appeals by Permission**

**(a) Orders Appealable by Petition.** A party may petition for leave to appeal to the Appellate Court from the following orders of the trial court:

- (1) from an order of the circuit court granting a new trial;
- (2) from an order of the circuit court allowing or denying a motion to dismiss on the grounds of *forum non conveniens*, or from an order of the circuit court allowing or denying a motion to transfer a case to another county within this State on such grounds;
- (3) from an order of the circuit court denying a motion to dismiss on the grounds that the defendant has done nothing which would subject defendant to the jurisdiction of the Illinois courts;
- (4) from an order of the circuit court granting or denying a motion for a transfer of venue based on the assertion that the defendant is not a resident of the county in which the action was commenced, and no other legitimate basis for venue in that county has been offered by the plaintiff;
- (5) from interlocutory orders affecting the care and custody of or the allocation of parental responsibilities for unemancipated minors or the relocation (formerly known as removal) of unemancipated minors, if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules;
- (6) from an order of the circuit court which remands the proceeding for a hearing *de novo* before an administrative agency;
- (7) from an order of the circuit court granting a motion to disqualify the attorney for any party;
- (8) from an order of the circuit court denying or granting certification of a class action under section 2–802 of the Code of Civil Procedure (735 ILCS 5/2-802); or
- (9) from an order of the circuit court denying a motion to dispose under the Citizen Participation Act (735 ILCS 110/1 *et seq.*)

If the petition for leave to appeal an order granting a new trial is granted, all rulings of the trial court on the posttrial motions are before the reviewing court without the necessity of a cross-petition.

### **(b) Procedure for Petitions Under Subparagraph (a)(5).**

(1) *Petition; Service; Record.* Unless another form is ordered by the Appellate Court, review of an order affecting the care and custody of or the allocation of parental responsibilities for an unemancipated minor or the relocation of unemancipated minors as authorized in paragraph (a)(5) shall be by petition filed in the Appellate Court. The petition shall state the relief requested and the grounds for the relief requested. An appropriate supporting record shall accompany the petition, which shall include 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 14 days of the entry or denial of the order from which review is being sought, with proof of personal or e-mail service as provided in Rule 11. The petition for leave to appeal must also be served upon the trial court judge who entered the order from which leave to appeal is sought.

(2) *Legal Memoranda.* With the petition, the petitioner may file a memorandum, not exceeding 15 pages or, alternatively, 4,500 words. The respondent or any other party or person entitled to be heard in the case may file, with proof of personal or e-mail service as provided in Rule 11, a responding memorandum within five business days following service of the petition and petitioner's memorandum. A memorandum by the respondent or other party may not exceed 15 pages or, alternatively, 4,500 words.

(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 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.

(5) *Procedure if Leave to Appeal Is Granted.* If leave to appeal is granted, the circuit court and the opposing parties shall be served with the order granting leave to appeal. All proceedings shall then be subject to the expedited procedures set forth in Rule 311(a). A party may allow his or her petition or answer to stand as his or her brief or may elect to file a new brief. In order to allow a petition or answer to stand as a brief, the party must notify the other parties and the clerk of the Appellate Court on or before the due date of the brief.

**(c) Procedure for All Other Petitions Under This Rule.**

(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. The petition 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.

(2) *Answer.* Any other party may file an answer 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.

(3) *Appendix to Petition.* The petition shall include, as an appendix, the order appealed from, and 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).

(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.

(5) After the petitioner has filed the petition and supporting record and the time for filing any answer has expired, the Appellate Court, except for good cause shown, shall decide whether to allow the interlocutory appeal within 30 days.

(6) *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 vacate or modify the stay, and may require the petitioner to file an appropriate bond. Within 48 hours after the granting of the petition, the Appellate Court clerk shall notify the clerk of the circuit court.

(7) *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 any party may request or the court may order the circuit clerk~~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.

(8) *Briefs.* A party may allow his or her petition or answer to stand as his or her brief or may file a 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. If the appellant elects to file a brief, it must be filed within 35 days from the date on which leave to appeal was granted. All briefs shall conform to the schedule and requirements as provided in Rules 341 through 343. Oral argument may be requested as provided in Rule 352(a).

Amended October 21, 1969, effective January 1, 1970, and amended effective September 1, 1974; 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 June 15, 1982, effective July 1, 1982; amended August 9, 1983, effective October 1, 1983; amended September 16, 1983, effective October 1, 1983; amended December 17, 1993, effective February 1, 1994; amended March 26, 1996, effective immediately; amended December 31, 2002, effective January 1, 2003; amended December 5, 2003, effective January 1, 2004; amended May 24, 2006, effective September 1, 2006; amended February 26, 2010, effective immediately; amended February 16, 2011, effective immediately; amended May 29, 2014, eff. July 1, 2014; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended Mar. 8, 2016, eff. immediately; amended June 22, 2017, eff. July 1, 2017; amended June 28, 2017, eff. July 1, 2017; amended Sept. 15, 2017, eff. Nov. 1, 2017; amended Sept. 26, 2019, eff. Oct. 1, 2019; amended Sept. 30, 2020, eff. Oct. 1, 2020.

Committee Comment  
(March 8, 2016)

#### Special Supreme Court Committee on Child Custody Issues

The Illinois Marriage and Dissolution of Marriage Act, Pub. Act 99-90 (eff. Jan. 1, 2016) (amending 750 ILCS 5/101 *et seq.*), has changed the terms “Custody,” “Visitation” (as to parents) and “Removal” to “Allocation of Parental Responsibilities,” “Parenting Time” and “Relocation.” These rules are being amended to reflect those changes. The rules utilize both “custody” and “allocation of parental responsibilities” in recognition that some legislative enactments covered by the rules utilize the term “custody” while the Illinois Marriage and Dissolution of Marriage Act and the Illinois Parentage Act of 2015 utilize the term “allocation of parental responsibilities.” The

Special Committee has attempted to adhere to the usage found in the applicable legislative enactments.

Committee Comment  
(May 29, 2014)

Subparagraph (c)(5)

In exceptional circumstances or by agreement of the parties, it may be appropriate for the parties to continue with certain aspects of the case (such as discovery, for example), provided that such continuation does not interfere with appellate review or otherwise offend the notions of substantial justice. If the stay is vacated or modified, the trial court remains (as with any interlocutory appeal) restrained from entering an order which interferes with the appellate review, such as modifying the trial court order that is the subject of the appeal.

Committee Comments  
(February 26, 2010)

In 2010, this rule was reorganized and renumbered for the sake of clarity. No substantive changes were made in this revision.

Paragraph (b)

Paragraph (b) was added to Rule 306 in 2004 to provide a special, expedited procedure to be followed in petitioning for leave to appeal from interlocutory orders affecting the care and custody of unemancipated minors. This procedure applies only to petitions for leave to appeal filed pursuant to subparagraph (a)(5) of this rule. The goal of this special procedure is to provide a faster means for achieving permanency for not only abused or neglected children, but also children whose custody is at issue in dissolution of marriage, adoption, and other proceedings.

Paragraph (c)

Paragraph (c) sets forth the procedures to be followed in petitioning for leave to appeal pursuant to any subparagraph of paragraph (a) except subparagraph (a)(5).

Subparagraph (c)(1)

This subparagraph was amended in 1979 to reflect changes in Rule 321 that eliminated the requirement that a praecipe for the record be filed.

Subparagraph (c)(2)

Subparagraph (c)(2) permits answers to the petition to be filed within 21 days after the due date of the petition instead of “within 15 days after the petition is served upon him.” They are not required to be printed as formerly, but may also be otherwise duplicated as are briefs. Former Rule

30 was silent as to a reply. Subparagraph (c)(2) provides that there shall be no reply except by leave.

#### Subparagraph (c)(3)

As originally promulgated, and as amended in 1974, this subparagraph provided that “excerpts from record” or an abstract should be filed. This represented a change from former Rule 30, which required the filing of a printed abstract of record. It was amended in 1979 to delete reference to “excerpts from record” to reflect the changes made in that year to provide for the hearing of most appeals on the original record, thus dispensing with the reproduction of “excerpts” from the record, and with an abstract as well, unless the court orders that one must be prepared. See the committee comments to Rule 342.

#### Subparagraph (c)(4)

Subparagraph (c)(4) is a general provision for extensions of time and does not change the practice in existence at the time of the adoption of the rule. In 1982, this subparagraph was reworded but not changed in substance.

#### Subparagraph (c)(5)

Subparagraph (c)(5) provides that the granting of the appeal from an order allowing a new trial *ipso facto* operates as a stay. The former rule required the giving of some kind of a bond to make a stay effective. A bond is not always appropriate. Subparagraph (c)(5) requires a bond only after a showing of good cause.

#### Subparagraph (c)(6)

As originally adopted Rule 343 provided that in cases in which a reviewing court grants leave to appeal, or allows an appeal as a matter of right, the appellant must file his brief within 35 days of the order allowing the appeal, and that in cases in which a party allows his petition for leave to appeal or his answer to such a petition to stand as his brief, he must notify the other parties and the clerk of the reviewing court. These provisions were applicable to all cases in which leave to appeal was required, whether to the Appellate Court or the Supreme Court. Rules 306(c)(6), 308(d), and 315(g) provided for the briefing schedule by cross-reference to Rule 343. In 1974, Rule 315(g), dealing with briefs in appeals to the Supreme Court from the Appellate Court, was amended to provide in detail for the filing of briefs, leaving the general language in Rule 343(a) relating to the filing of the appellant’s brief in cases taken on motion for leave to appeal applicable only to appeals under Rules 306 and 308, and the provision for notice of intention to let the petition or answer stand as a brief applicable only to appeals under Rule 306. In the interest of clarity these provisions were placed in Rules 306(c)(6) and 308(d) and the general language deleted from Rule 343(a). This represents no change in practice. The briefing schedule after the due date of the appellant’s brief (35 days for the appellee’s brief and 14 days for a reply brief) remains governed by Rule 343(a).

#### Subparagraph (c)(7)

Former Rule 30 provided that after allowance of the appeal and the filing of the stay bond, “The case is then pending on appeal.” This obvious fact was omitted from Rule 306 as unnecessary. Subparagraph (c)(7) does provide that if the appeal is granted oral argument may be requested as provided in Rule 352.

#### Committee Comments (Revised September 1983)

This rule replaced former Rule 30, which was in effect from January 1, 1964, to December 31, 1966, and which in turn was derived from former section 77(2) of the Civil Practice Act, repealed effective January 1, 1964 (Laws of 1963, p. 2691, § 2). The Judicial Article of the new Illinois constitution (art. VI, § 6) contains substantially the same language on interlocutory appeals that appeared in the 1964 Judicial Amendment, and authorizes this rule in the following language:

“The Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of the Circuit Courts.”

#### Paragraph (a)

Paragraph (a), as originally adopted, made no change in the prior rule except to permit the petition to be duplicated in the same manner as a brief (see Rule 344) instead of always being printed. The petition is to be filed within 30 days, subject to an extension of time under paragraph (e).

Paragraph (a) was amended in 1969 by adding subparagraph (2), denominating as subparagraph (1) what was formerly entire paragraph (a), and making appropriate changes in the headings. Subparagraph (2), together with Rule 366(b)(2)(v), also added in 1969, abrogates the ruling in *Keen v. Davis*, 108 Ill. App. 2d 55, 63-64 (5th Dist. 1969), denying reviewability, on appeal from an order allowing a new trial, of questions raised by other rulings of the trial court on the post-trial motion. Revised Rule 366(b)(2)(v) makes it clear that the absence of a final judgment is not a bar to review of all the rulings of the trial court on the post-trial motions. See the Committee Comments to that rule.

In 1982, paragraph (a)(1) was amended by adding subparagraphs (i), (ii), (iii), and (iv), expanding the instances in which appeals could be sought in the appellate court. Also in 1982, subparagraph (a)(2) was amended to make it clear that post-trial motions are before the reviewing court without the necessity of filing a cross-appeal only when the appellate court has granted a petition for leave to appeal an order granting a new trial.

In 1983, paragraph (a)(1)(ii) was amended to permit a party to seek leave to appeal from a circuit court order allowing or denying a motion to transfer a case to another county within Illinois on the grounds of *forum non conveniens*. See *Torres v. Walsh* (1983), 97 Ill. 2d 338; *Mesa v. Chicago & North Western Transportation Co.* (1933), 97 Ill. 2d 356.

#### Paragraph (b)



Paragraph (b) was amended in 1979 to reflect changes in Rule 321 that eliminated the requirement that a praecipe for record be filed.

#### Paragraph (c)

Paragraph (c) permits answers to the petition to be filed within 21 days after the due date of the petition instead of “within 15 days after the petition is served upon him.” They are not required to be printed as formerly, but may also be otherwise duplicated as are briefs. Former Rule 30 was silent as to a reply. Paragraph (c) provides that there shall be no reply except by leave.

#### Paragraph (d)

As originally promulgated, and as amended in 1974, paragraph (d) provided that “excerpts from record” or an abstract should be filed. This represented a change from former Rule 30, which required the filing of a printed abstract of record. It was amended in 1979 to delete reference to “excerpts from record” to reflect the changes made in that year to provide for the hearing of most appeals on the original record, thus dispensing with the reproduction of “excerpts” from the record, and with an abstract as well, unless the court orders that one must be prepared. See the committee comments to Rule 342.

#### Paragraph (e)

Paragraph (e) is a general provision for extensions of time and does not change the practice in existence at the time of the adoption of the rule. In 1982, this paragraph was reworded but not changed in substance.

#### Paragraph (f)

Paragraph (f) provides that the granting of the appeal from an order allowing a new trial *ipso facto* operates as a stay. The former rule required the giving of some kind of a bond to make a stay effective. A bond is not always appropriate. Paragraph (f) requires a bond only after a showing of good cause.

#### Paragraph (g)

As originally adopted Rule 343 provided that in cases in which a reviewing court grants leave to appeal, or allows an appeal as a matter of right, the appellant must file his brief within 35 days of the order allowing the appeal, and that in cases in which a party allows his petition for leave to appeal or his answer to such a petition to stand as his brief, he must notify the other parties and the clerk of the reviewing court. These provisions were applicable to all cases in which leave to appeal was required, whether to the Appellate Court or the Supreme Court. Rules 306(g), 308(d), and 315(g) provided for the briefing schedule by cross-reference to Rule 343. In 1974, Rule 315(g), dealing with briefs in appeals to the Supreme Court from the Appellate Court, was amended to provide in detail for the filing of briefs, leaving the general language in Rule 343(a) relating to the filing of the appellant’s brief in cases taken on motion for leave to appeal applicable only to appeals

under Rules 306 and 308, and the provision for notice of intention to let the petition or answer stand as a brief applicable only to appeals under Rule 306. In the interest of clarity these provisions were placed in Rules 306(g) and 308(d) and the general language deleted from Rule 343(a). This represents no change in practice. The briefing schedule after the due date of the appellant's brief (35 days for the appellee's brief and 14 days for a reply brief) remains governed by Rule 343(a).

#### Paragraph (h)

Former Rule 30 provided that after allowance of the appeal and the filing of the stay bond, "The case is then pending on appeal." This obvious fact was omitted from Rule 306 as unnecessary. Paragraph (h) does provide that if the appeal is granted oral argument may be requested as provided in Rule 352.

### 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 two or more judges of that panel join in 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.**

(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 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 35 days after the entry of the order denying the petition for rehearing. If a petition is granted, the petition for leave to appeal must be filed within 35 days of the entry of the judgment on rehearing. 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. The filing of a corrected opinion by the Appellate Court where no petition for

rehearing was filed does not extend the time for a party to file a petition for leave to appeal.

(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 unless a timely motion to publish has been filed in the Appellate Court pursuant to Rule 23(f). If the Appellate Court grants the motion to publish, the party seeking review must file the petition for leave to appeal within 35 days after the filing of the opinion. If the Appellate Court denies the motion to publish, the party seeking review must file the petition for leave to appeal within 35 days after entry of the order denying the motion to publish. The filing of a Rule 23(f) publication motion shall not invalidate a previously filed petition for leave to appeal. The clerk of the Appellate Court shall promptly transmit notice of the filing of a Rule 23(f) publication motion and its disposition to the clerk of the Supreme Court in any case in which a petition for leave to appeal is filed, irrespective of whether the motion to publish precedes or follows the filing of a 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 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 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, in the format as set forth in the Standards and Requirements for Electronic Filing the Record on Appeal.

(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 the opinion or order of the Appellate Court and any documents from the record which are deemed necessary to the consideration of the petition.

**(d) Format; Service; Filing.** The petition shall otherwise be prepared, served, and filed in accordance with the requirements for briefs as set forth in Rules 341 through 343, except that it shall be limited to 20 pages or, alternatively, 6,000 words, excluding any items identified as excluded from the length limitation in Rule 341(b)(1).

**(e) Records.** The clerk of the Supreme Court shall transmit 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, shall transmit to the clerk of the Supreme Court the record on appeal that was filed in the Appellate Court and the certified Appellate Court record.

**(f) Answer.** The respondent need not but may file an answer, with proof of service, within 21 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. 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 (c)

except to the extent that correction of the petition is considered necessary. The answer shall be prepared, served, and filed in accordance with the requirements for briefs except that it shall be limited to 20 pages or, alternatively, 6,000 words, excluding any items identified as excluded from the length limitation in Rule 341(b)(1). 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 request for such notice should be submitted to the clerk in Springfield.

**(g) Transmittal of Trial Court Record if Petition Is Granted.** If the petition is granted, upon notice from the clerk of the Supreme Court the clerk of the Appellate Court shall transmit to the Supreme Court the record on appeal that was filed in the Appellate Court and the Appellate Court record, unless already filed in the Supreme Court.

**(h) Briefs Other Than in Child Custody and Delinquent Minor Cases.** 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. 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 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(h)(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. 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 a brief, and within the same time shall file the notice with the clerk of the Supreme Court. If the appellee elects to file a 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 and that brief does not contain arguments in support of cross-relief, 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 may file a combined reply brief and response to the appellee's request for cross-relief within 35 days of the due date of appellee's brief, and the appellee may file a reply brief confined strictly to the appellant's arguments in opposition to the appellee's request for cross-relief within 14 days of the due date of appellant's combined brief. If the brief of the appellee contains arguments in support of cross-

relief, the cover of the appellee's brief shall be captioned: "Brief of Appellee. Cross-Relief Requested," the cover of the appellant's combined reply brief and response to the appellee's request for cross-relief shall be captioned "Appellant's Reply Brief and Response to Request for Cross-Relief," and the cover of the appellee's reply in support of its request for cross-relief shall be captioned "Appellee's Reply in Support of Request for Cross-Relief."

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 343. If the brief of appellee contains arguments in support of cross-relief, then the length limitations for cross-appeals in Rule 341(b)(1) shall apply to the briefing in the case.

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.

**(i) Child custody cases.**

(1) Special caption. A petition for leave to appeal in a child custody or allocation of parental responsibilities or relocation of emancipated minors case, as defined in Rule 311, and any notice, motion, or pleading related thereto, shall include the following statement in bold type on the top of the front page: **THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).**

(2) Briefs. The requirements of paragraph (h) above shall apply in all respects, except:

(a) the appellant's notice of election shall be due within 7 days after the date on which the leave to appeal was allowed;

(b) if the appellant elects to file an additional brief, it shall be filed within 21 days from the date on which leave to appeal was allowed;

(c) if the appellant has elected to allow the petition for leave to appeal to stand as the brief of the appellant, the appellee's notice of election is due within 7 days of the due date of appellant's notice of election, or if the appellant has elected to file an additional brief, the appellee's notice of election is due within 7 days after the due date of appellant's brief;

(d) if the appellee elects to file an additional brief, it shall be filed within 21 days of the due date of appellant's notice of election to let the petition for leave to appeal stand as the brief of the appellant, or if the appellant elected to file an additional brief, the appellee's additional brief shall be filed within 21 days of the due date of appellant's brief;

(e) if the appellee has elected to file an additional brief, the appellant's reply brief shall be due within 7 days of the due date of the appellee's brief; and

(f) if cross-relief was requested, appellee's reply brief shall be due within 7 days of the due date of the appellant's reply brief.

(3) Extensions of Time Disfavored. Requests for extensions of time are disfavored and shall be granted only for compelling circumstances.

**(j) Delinquent minor cases.**

(1) Special Caption. A petition for leave to appeal in a delinquent minor case, as provided

for in Rule 660A, and any notice, motion, or pleadings related thereto, shall include the following statement in bold type on the top of the front page: **THIS APPEAL INVOLVES A DELINQUENT MINOR PROCEEDING UNDER THE JUVENILE COURT ACT.**

(2) Briefs. The requirements of paragraph (h) above shall apply in all respects, except:

(a) the appellant's notice of election shall be due within 7 days after the date on which the leave to appeal was allowed;

(b) if the appellant elects to file an additional brief, it shall be filed within 28 days from the date on which leave to appeal was allowed;

(c) if the appellant has elected to allow the petition for leave to appeal to stand as the brief of the appellant, the appellee's notice of election is due within 7 days of the due date of the appellant's notice of election, or if the appellant has elected to file an additional brief, the appellee's notice of election is due within 7 days after the due date of the appellant's brief;

(d) if the appellee elects to file an additional brief, it shall be filed within 28 days of the due date of the appellant's notice of election to let the petition for leave to appeal stand as brief of appellant, or if the appellant elected to file an additional brief, the appellee's additional brief shall be filed within 28 days of the due date of the appellant's brief;

(e) if the appellee has elected to file an additional brief, the appellant's reply brief shall be due within 7 days of the due date of the appellee's brief; and

(f) if cross-relief was requested, the appellee's reply brief shall be due within 7 days of the due date of the appellant's reply brief.

(3) Extensions of Time Disfavored. Requests for extensions of time are disfavored and shall be granted only for compelling circumstances.

**(k) 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; amended May 24, 2006, effective September 1, 2006; amended August 15, 2006, effective immediately; amended October 2, 2006, effective immediately; amended September 25, 2007, effective October 15, 2007; amended February 26, 2010, effective immediately; amended Mar. 15, 2013, eff. May 1, 2013; amended May 23, 2013, eff. July 1, 2013; amended Dec. 11, 2014, eff. Jan. 1, 2015; amended Mar. 15, 2016, eff. immediately; amended June 22, 2017, eff. July 1, 2017; amended June 28, 2017, eff. July 1, 2017; amended Sept. 15, 2017, eff. Nov. 1, 2017; amended Mar. 21, 2018, eff. Apr. 1, 2018; amended Apr. 3, 2018, eff. July 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019; amended Sept. 30, 2020, eff. Oct.

1, 2020.

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 316**

**Rule 316. Appeals from Appellate Court to Supreme Court on Certificate**

Appeals from the Appellate Court shall lie to the Supreme Court upon the certification by the Appellate Court that a case decided by it involves a question of such importance that it should be decided by the Supreme Court. Application for a certificate of importance may be included in a petition for rehearing or may be made by filing a petition, clearly setting forth the grounds relied upon, with the clerk of the Appellate Court within 35 days after the entry of the judgment appealed from if no petition for rehearing is filed or, if a petition for rehearing is filed, within 14 days after the denial of the petition or the entry of the judgment on rehearing. An application for a certificate of importance does not extend the time for filing a petition for leave to appeal to the Supreme Court. The length of the application and answer, if any, shall be governed by Supreme Court Rule 367. No answer to an application for a certificate of importance will be received unless requested by the Appellate Court.

When the Appellate Court has granted a certificate of importance, the clerk of that court shall transmit to the clerk of the Supreme Court the record on appeal that was filed in the Appellate Court, with the certified Appellate Court record and opinions appended thereto, and the certificate of importance of the Appellate Court. The Appellate Court may require bond as a condition of granting a certificate of importance. The record shall be transmitted to the office of the clerk of the

Supreme Court not later than 14 days from the date the certificate of importance is granted. Briefs shall be filed as provided in Rules 341 through 343~~344~~. The appellant's brief shall contain the Appellate Court opinion.

Amended July 30, 1979, effective October 15, 1979; amended December 17, 1993, effective February 1, 1994; amended December 6, 2006, effective immediately; amended June 22, 2017, eff. July 1, 2017; amended Sept. 30, 2020, eff. Oct. 1, 2020.

Committee Comments  
(Revised 1979)

This rule providing for appeal by certificate of importance from the Appellate Court is former Rule 32(2) without change in substance except that the time for filing is slightly changed. It is measured in multiples of 7 days and the periods run from the date the judgment is entered. The revision makes it clear that application for a certificate of importance may be included in a petition for rehearing or may be filed separately within the time specified. It is important to notice, however, that the application does not extend the time for petitioning the Supreme Court to grant leave to appeal as a matter of discretion. It may therefore be more convenient and prudent, if a petition for rehearing is to be filed, to join the application for certificate of importance with the petition for rehearing.

In 1979, Rule 342 was amended to provide that, with the exception of stated documents (see Rule 342(a)), no portions of the record shall be reproduced, and that, absent an order of the reviewing court, no abstract shall be prepared and filed. The last sentence of Rule 316 was amended to reflect this change in the practice. See the committee comments to Rule 342.

Commentary  
(December 17, 1993)

It is well established that typewritten documents are accepted for filing in the reviewing courts and that professionally printed documents are not necessary.

The rule is amended to be consistent with the time frame of Rule 315(b).

**Amended Rule 318**

**Rule 318. General Rules Governing All Appeals from the Appellate Court to the Supreme Court**

(a) Relief to Other Parties. In all appeals, by whatever method, from the Appellate Court to the Supreme Court, any appellee, respondent, or coparty may seek and obtain any relief warranted by the record on appeal without having filed a separate petition for leave to appeal or notice of cross-appeal or separate appeal.

(b) Interlocutory Review. The review of cases at an interlocutory stage is not favored, and a failure to seek review when the Appellate Court's disposition of the case is not final does not constitute a waiver of the right to present any issue in the appropriate court thereafter.



(c) Appellate Court Briefs. If it is important for the Supreme Court to know the contentions of any party in the Appellate Court, e-filed, stamped copies of the pertinent Appellate Court briefs ~~certified by the clerk of that court~~ may be filed with ~~in~~ the Supreme Court.

(d) Fees. In appeals taken from the Appellate Court, the clerk of that court is entitled to receive from the party appealing only the fees allowed by law or these Rules.

Amended December 17, 1993, effective February 1, 1994; amended June 22, 2017, eff. July 1, 2017; amended Sept. 30, 2020, eff. Oct. 1, 2020.

#### Committee Comments

This rule is taken without major change from former Rules 32(1), 32(4), 32(5) and 39(2). Paragraph (c) differs from the last mentioned rule in that it dispenses with the need for obtaining leave of the Supreme Court in order to have briefs in the Appellate Court certified to the Supreme Court. In addition it deletes the requirement of former Rule 39 that the Appellate Court briefs shall be filed only “if it is important to know the position taken by any party in the Appellate Court.”

#### Amended Rule 341

##### **Rule 341. Briefs**

**(a) Form of Briefs.** Briefs shall be submitted in clear, black text on white pages, each measuring 8½ by 11 inches. The text must be double-spaced; however, headings may be single-spaced. Margins must be at least 1½ inch on the left side and 1 inch on the other three sides. Each page shall be numbered within the bottom margin. Quotations of two or more lines in length may be single-spaced; however, lengthy quotations are not favored and should be included only where they will aid the court’s comprehension of the argument. Footnotes are discouraged but, if used, may be single-spaced.

Typeface must be 12-point or larger throughout the document, including quoted material and any footnotes. Condensed type is prohibited.

##### **(b) Length of Briefs.**

(1) Length Limitation. The brief of appellant and brief of appellee shall each be limited to 50 pages, and the reply brief to 20 pages. Alternatively, the brief of appellant and brief of appellee shall each be limited to no more than 15,000 words and the reply brief to 6,000 words. This limitation excludes pages and words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a). Cross-appellants and cross-appellees shall each be allowed an additional 30 pages or, alternatively, 9,000 words, and the cross-appellant’s reply brief shall not exceed 20 pages or, alternatively, 6,000 words.

(2) Motions. Motions to file a brief in excess of the length limitation of this rule are not favored. Such a motion shall be filed not less than 10 days before the brief is due or not less than 5 days before a reply brief is due and shall state the excess number of pages or words

requested and the specific grounds establishing the necessity for excess pages or words. The motion shall be supported by affidavit or verification by certification under Section 1-109 of the Code of Civil Procedure of the attorney or self-represented litigant. Any affidavit shall be sworn to before a person who has authority under the law to administer oaths.

**(c) Certificate of Compliance.** The attorney or self-represented litigant shall submit with the brief his or her signed certification that the brief complies with the form and length requirements of paragraphs (a) and (b) of this rule, as follows:

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is \_\_\_\_ pages or words.

**(d) Covers.** The cover of the brief shall contain: the number of the case in the reviewing court and the name of that court; the name of the court or administrative agency from which the case was brought; the name of the case as it appeared in the lower tribunal, except that the status of each party in the reviewing court shall also be indicated (*e.g.*, plaintiff-appellant); the name of the trial judge entering the judgment to be reviewed; and the individual names and addresses of the attorneys and their law firm (or of the party if the party has no attorney) filing the brief shall also be stated.

The colors of the covers of the documents, whether electronic or paper, shall be: appellant's brief or petition, white; appellee's brief or answer, light blue; appellant's reply brief, light yellow; reply brief of appellee, light red; petition for rehearing, light green; answer to petition for rehearing, tan; and reply on rehearing, orange. If a separate appendix is filed, the cover shall be the same color as that of the brief which it accompanies.

**(e) Duplicate Copies and Proof of Service.** Electronically filed briefs shall be considered the official original. A court of review may, in its electronic filing procedures, require duplicate paper copies bearing the court's electronic file stamp. Such copies shall be printed one-sided and securely bound on the left side in a manner that does not obstruct the text. Such copies shall be received by the clerk within five days of the electronic notification generated upon acceptance of an electronically filed document.

The brief shall be served upon each other party to the appeal represented by separate counsel. Proof of service shall be filed with all briefs.

**(f) References to Parties.** In the brief the parties shall be referred to as in the trial court, *e.g.*, plaintiff and defendant, omitting the words appellant and appellee and petitioner and respondent, or by using actual names or descriptive terms such as "the employee," "the injured person," "the taxpayer," "the railroad," etc.

In all appeals involving juveniles filed from proceedings under the Juvenile Court Act or the Adoption Act, and in all appeals under the Mental Health and Developmental Disabilities Code, the Mental Health and Developmental Disabilities Confidentiality Act, or from actions for collection of fees for mental health services, the respective juvenile or recipient of mental-health services shall be identified by first name and last initial or by initials only.

The preferred method is the first name and last initial. The alternative method of initials only

is to be used when, due to an unusual first name or spelling, the preferred method would create a substantial risk of revealing the individual's identity. The name of the involved juvenile or recipient of services shall not appear in the brief.

**(g) Citations.** Citations shall be made as provided in Rule 6.

**(h) Appellant's Brief.** The appellant's brief shall contain the following parts in the order named:

(1) A table of contents, including a summary statement, entitled "Points and Authorities," of the points argued and the authorities cited in the Argument. This shall consist of the headings of the points and subpoints as in the Argument, with the citation under each heading of the authorities relied upon or distinguished, and a reference to the page of the brief on which each heading and each authority appear. ~~Cases shall be cited as near as may be in the order of their importance.~~

(2) An introductory paragraph stating (i) the nature of the action and of the judgment appealed from and whether the judgment is based upon the verdict of a jury, and (ii) whether any question is raised on the pleadings and, if so, the nature of the question.

*Illustration:*

"This action was brought to recover damages occasioned by the alleged negligence of the defendant in driving his automobile. The jury rendered a verdict for the plaintiff upon which the court entered the judgment from which this appeal is taken. No questions are raised on the pleadings."

(3) A statement of the issue or issues presented for review, without detail or citation of authorities.

*Illustration:*

Issue Presented for Review:

"Whether the plaintiff was guilty of contributory negligence as a matter of law."

[or]

"Whether the trial court ruled correctly on certain objections to evidence."

[or]

"Whether the jury was improperly instructed."

The appellant must include a concise statement of the applicable standard of review for each issue, with citation to authority, either in the discussion of the issue in the argument or under a separate heading placed before the discussion in the argument.

(4) A statement of jurisdiction:

(i) In a case appealed to the Supreme Court directly from the trial court or as a matter of right from the Appellate Court, a brief statement under the heading "Jurisdiction" of the

jurisdictional grounds for the appeal to the Supreme Court.

(ii) In a case appealed to the Appellate Court, a brief, but precise statement or explanation under the heading "Jurisdiction" of the basis for appeal including 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. In appeals from a judgment as to all the claims and all the parties, the statement shall demonstrate the disposition of all claims and all parties. All facts recited in this statement shall be supported by page references to the record on appeal.

(5) In a case involving the construction or validity of a statute, constitutional provision, treaty, ordinance, or regulation, the pertinent parts of the provision verbatim, with a citation of the place where it may be found, all under an appropriate heading, such as "Statutes Involved." If the provision involved is lengthy, its citation alone will suffice at this point, and its pertinent text shall be set forth in an appendix.

(6) Statement of Facts, which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal in the format as set forth in the Standards and Requirements for Electronic Filing the Record on Appeal.

(7) Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. Evidence shall not be copied at length, but reference shall be made to the pages of the record on appeal where evidence may be found. Citation of numerous authorities in support of the same point is not favored. Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.

(8) A short conclusion stating the precise relief sought, followed by the names of counsel as on the cover.

(9) An appendix as required by Rule 342.

**(i) Briefs of Appellee and Other Parties.** The brief for the appellee and other parties shall conform to the foregoing requirements, except that items (2), (3), (4), (5), (6), and (9) of paragraph (h) of this rule need not be included except to the extent that the presentation by the appellant is deemed unsatisfactory.

**(j) Reply Brief.** The reply brief, if any, shall be confined strictly to replying to arguments presented in the brief of the appellee and need contain only Argument.

**(k) Supplemental Brief on Leave to Appeal.** A party allowing a petition for leave to appeal or for appeal as a matter of right or an answer thereto to stand as his or her main brief, may file a supplemental brief, so entitled, containing additional material, and omitting any of the items set forth in paragraph (h) of this rule to the extent that they are adequately covered in the petition or answer. The Points and Authorities in the supplemental brief need relate only to the contents of that brief.

Amended October 21, 1969, effective January 1, 1970; amended July 30, 1979, effective October 15,

1979; amended January 5, 1981, effective February 1, 1981; amended February 19, 1982, effective April 1, 1982; amended May 28, 1982, effective July 1, 1982; amended April 27, 1984, and May 16, 1984, effective July 1, 1984; amended April 10, 1987, effective August 1, 1987; amended May 21, 1987, effective August 1, 1987; amended June 12, 1987, effective immediately; amended May 18, 1988, effective August 1, 1988; amended January 20, 1993, effective immediately; amended December 17, 1993, effective February 1, 1994; amended May 20, 1997, effective July 1, 1997; amended April 11, 2001, effective immediately; amended October 1, 2001, effective immediately; amended May 24, 2006, effective September 1, 2006; amended March 16, 2007, effective immediately; amended June 4, 2008, effective July 1, 2008; amended Feb. 6, 2013, eff. immediately; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended June 22, 2017, eff. July 1, 2017; amended Sept. 15, 2017, eff. Nov. 1, 2017; amended May 25, 2018, eff. immediately; amended Sept. 30, 2020, eff. Oct. 1, 2020.

Committee Comments  
(revised Sept. 15, 2017)

This rule was based upon former Supreme Court Rule 39, effective until January 1, 1967, which in turn was based upon former Uniform (and later Second, Third, Fourth, and Fifth District) Appellate Court Rule 7. There were no major changes.

Paragraph (a)

This paragraph deals with the length of briefs and the use of footnotes. It is derived from the second, third, and fourth sentences of former Rule 39(1). Three printed pages will normally contain approximately as many words as four unprinted pages, so the length limitations are substantially the same for printed and unprinted briefs.

The provision that footnotes are to be in the same size type as required for the text of the brief was deleted. Footnotes are to be used sparingly. Rule 344(b) prescribes 10-point type on 11-point slugs, instead of the 11-point type used in the body. This use of smaller type is conventional in the printing of legal texts, law reviews, the opinions of the Supreme Court of the United States, and other comparable materials. It is believed that the limited use of this slightly smaller type will not impose a burden on the courts.

In 1984 subsection (a) was amended to reduce from 75 to 50 the number of pages allowed to be in a printed brief and from 100 to 75 the number allowed in a brief that is not printed, and excludes from that page limitation those matters which are required by Rule 342(a) to be appended thereto.

Paragraph (b)

This is a revision of former Rule 40(1). The alternative word limitation for determining the maximum length of briefs is based on a uniform assumption of 300 words per page.

Paragraph (c)

This paragraph is derived in part from the first sentence of former Rule 39(1), except that it recognizes certain existing practices not permitted by the former rule if it was read literally. One

is the use of the designations “appellant” and “appellee,” together with the designation of the party in the trial court, in the title of the case appearing in the caption. The other is that the parties may be referred to by actual names or descriptive terms instead of as plaintiff or defendant, which in many instances is desirable to avoid confusion.

The paragraph was amended effective October 1, 2001, to help protect the identities of recipients of mental health services. The amendment requires that only their first name and last initial, or their initials, appear on documents filed with the Appellate Court or any subsequent court. The requirement covers the parties’ briefs, motions, and other similar papers. The amendment does not require deletion of names from the trial record in preparing the record on appeal, nor does it address the means by which the Appellate Court or a subsequent court maintains the confidentiality of documents appearing in the record.

#### Paragraph (d)

Effective January 20, 1993, the requirements applicable to citations to cases, textbooks and statutes were placed in Rule 6, which is applicable to all documents filed in court, including briefs.

#### Paragraph (e)

Paragraph (e) is a substantial revision of portions of former Rule 39.

In 1981 the subparagraphs were restructured to make “Points and Authorities” the first part of the brief, so that it might act as a table of contents.

Subparagraph (1) is based upon the first three sentences of the paragraph designated II of former Rule 39(1). The revised provision specifically relates the Points and Authorities to the Argument. The same headings of the points and subpoints are to be used both here and in the Argument. The former provision that the three cases most relied on shall be cited first under each point was deleted in favor of the last sentence of subparagraph (e), which provides for ranking cases “as near as may be in the order of their importance.”

The “introductory paragraph” provided for in subparagraph (2) will ordinarily not be captioned as such in the brief. As the illustration shows, the introductory paragraph is for the purpose of informing the court of the general area of the law in which the case falls, whether there was a jury trial, and whether there is a pleading question and if so what it is. The practice of many lawyers was to include in the statement of “The Nature of the Action” called for by the former rule much more detail than the courts wanted at this place in the brief.

The former requirement that “The Nature of the Case” include a statement of the party’s “theory of the case” also produced much more detail than the rule contemplated.

Subparagraph (3) substitutes for the “theory of the case” a statement of “the issue or issues presented for review.” Again, the court does not want detail at this point in the brief, as the illustration in the rule following this subparagraph attempts to make clear. The statement of the issue presented for review is not to be an elaborately framed legal question. Its purpose is to give the court a general idea of what the case is about. The court is not ready at this stage to appreciate the details. It should be noticed, for example, that the first alternative illustration of a statement of the issue presented for review does not state what conduct it is that one of the parties contends is

contributory negligence as a matter of law. The second alternative does not describe the objections or the evidence to which they relate. The third alternative does not describe the instruction of which the complaint is made.

Subparagraph (4) is in part based upon former Rule 28-1, B. A similar provision appears in the rules of the Supreme Court of the United States. (Rule 40, 1(b).) In cases appealed to the Illinois Supreme Court as of right, it is important that the court be satisfied at the outset that jurisdiction exists. (See the comments to Rule 302.)

Subparagraph (4)(ii) was expanded effective February 1, 1994, to provide more comprehensive examples of what must be included in the statement demonstrating jurisdiction in the Appellate Court.

Subparagraph (5) is a combination of the third paragraph of former Rule 39(1) and paragraph 1(c) of Rule 40 of the rules of the Supreme Court of the United States.

Subparagraph (6) was based upon the paragraph numbered III of former Rule 39(1). The provision with respect to the citation of exhibits was new, as were the illustrations as to the form of the citations to the record. This subparagraph was amended in 1979 to delete reference to the preparation of excerpts from record to reflect the amendment of Rule 342 to eliminate the preparation and duplication of excerpts from the record except for the inclusion of copies of stated documents as an appendix to the brief, and to eliminate the preparation and filing of an abstract except on order of the reviewing court. (See Rule 342(a).) Because the elimination of excerpts and an abstract in most cases lends added importance to the accuracy and fairness with which the facts are stated in the brief, the first sentence of the subparagraph was amended to emphasize this point. A similar amendment was made to Rule 315(b)(4). See the committee comments to Rule 342.

Subparagraph (7) is a revision of the paragraph numbered IV of former Rule 39(1). The description of what the Argument is to contain is somewhat amplified. The provision admonishing against citation of numerous authorities was new. The limitation of the Argument to points made and cases cited in the Points and Authorities is no longer appropriate, since the Points and Authorities is to be derived from the Argument. The former provision that a point “made but not argued may be considered waived” was changed to the affirmative statement of the last sentence of the paragraph that failure to argue results in waiver and, further, that a point that has not been argued shall not be raised subsequently.

Subparagraph (8), requiring a short conclusion stating the precise relief sought, was new. It is customary to include a conclusion in a brief, but the relief sought is not always stated in the conclusion. This provision requires the party to end his brief by telling the court what relief he wants.

#### Paragraph (f)

The predecessor of this paragraph is the second paragraph following the paragraph numbered IV in former Rule 39(1). The new provision is simplified. The requirement that the appellee’s brief state the propositions relied upon to sustain the judgment “as far as practicable, in the same order as the points of appellant” was not brought forward into the present rule. When the nature of the subject matter permits, counsel will normally follow the order established by his opponent in the interest of making his brief as convenient as possible for the court to use. Sometimes effective

advocacy requires that a different order be adopted. In the opinion of the committee it is not possible to regulate this matter by rule.

#### Paragraph (g)

Paragraph (g) is the last paragraph of former Rule 39(1), without change of substance.

#### Paragraph (h)

Paragraph (h) as it appeared in the revised rules effective January 1, 1967, was deleted in October 1969, as unnecessary in light of paragraph (b) of Rule 343, adopted at that time.

What is now paragraph (h) was paragraph (i) of the revision adopted effective January 1, 1967, and was new at that time, although it provides specifically for a practice that was often employed under the former rules. This paragraph makes clear the extent to which the requirements of Rule 341 apply to a supplemental brief filed in supplement of, rather than in lieu of, a petition for leave to appeal or an answer that party has allowed to stand as his main brief.

### 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 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 shall issue not earlier than 35 days after entry of the order denying the petition unless the court upon motion orders the time shortened or enlarged. The filing of a corrected opinion where no petition for rehearing has been filed does not extend the time for transmission of the mandate.

**(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 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 Sept. 30, 2020, eff. Oct. 1, 2020.

#### Committee Comments

This rule is principally derived from section 82(4) of the Civil Practice Act and former Supreme Court Rule 45, Rule 10 of the First Appellate District, and Rule 16 of the other appellate districts (earlier Uniform Appellate Court Rule 16). The rule is made the same for the supreme and appellate courts.

#### Paragraph (a)

Paragraph (a) enlarges the minimum time for issuance of a mandate from 15 to 21 days, but reduces the time after denial of rehearing from 10 to 7 days in the Appellate Court and, in the Supreme Court, from the period until the end of the term, or 15 days if the denial was during vacation, to 7 days. There is no good reason for delay after rehearing is denied. Issuance of the mandate in the Supreme Court is no longer tied in to the close of the term of court. The mandate is to be issued automatically by the clerk of the reviewing court.

#### Paragraph (b)

Paragraph (b) removes from the automatic stay provision of the superseded Appellate Court rules (Rule 10 of the First District, Rule 16 of the other districts) cases in which the Appellate Court sets aside or modifies an injunction. The committee believes that in view of the nature and gravity of injunctive relief it is wrong to provide for the automatic continuance of an injunction that presumptively was erroneously issued, in whole or in part, and that such an injunction should be continued in effect only if one of the reviewing courts or a judge thereof determines that it should be.

The provision of the former rules for an automatic stay in other cases (unless the Supreme or Appellate Court or a judge of either otherwise orders) is retained. The affidavit filed to obtain the automatic stay may be that of the party or his attorney, and need not be executed by both as under the former rules.

#### Paragraph (c)

Paragraph (c) simplifies section 82(4) of the Civil Practice Act to make it clear that the Supreme Court, the Appellate Court, or a judge of either, when appropriate, has discretion to grant a stay upon just terms until final disposition of the case, whether by the Illinois Supreme Court or the Supreme Court of the United States.

#### **Amended Rule 705**

**Rule 705. Admission on Motion**

Any person who, as determined by the Board of Admissions to the Bar, has been licensed to practice in the highest court of law in any United States state, territory, or the District of Columbia for no fewer than three years may be eligible for admission on motion on the following conditions:

- (a) The applicant meets the educational requirements of Rule 703.
  - (b) The applicant meets Illinois character and fitness requirements and has been certified by the Committee on Character and Fitness.
  - (c) The applicant licensed to practice law for fewer than 15 years has passed the Multistate Professional Responsibility Examination in Illinois or in any jurisdiction in which it was administered.
  - (d) The applicant is in good disciplinary standing before the highest court of every jurisdiction in which ever admitted and is at the time of application on active status in at least one such jurisdiction. For purposes of this rule, the term “jurisdiction” shall mean any United States state, territory, or the District of Columbia.
  - (e) The applicant provides documentary evidence satisfactory to the Board that for at least three of the five years immediately preceding the application, he or she was engaged in the active, continuous, and lawful practice of law.
  - (f) The applicant has paid the fee for admission on motion in accordance with Rule 706.
  - (g) For purposes of this rule, the term “practice of law” shall mean:
    - (1) Practice as a sole practitioner or for a law firm, professional corporation, legal services office, legal clinic, or other entity the lawful business of which consists of the practice of law or the provision of legal services;
    - (2) Employment in a state or local court of record in a United States state, territory, or the District of Columbia as a judge, magistrate, referee or similar official, or as a judicial law clerk;
    - (3) Employment in a federal court of record in a United States state, territory, or the District of Columbia as a judge, magistrate, referee or similar official, or as a judicial law clerk;
    - (4) Employment as a lawyer for a corporation, agency, association, trust department, or other similar entity;
    - (5) Practice as a lawyer for a state or local government;
    - (6) Practice as a lawyer for the federal government, including legal service in the armed forces of the United States;
    - (7) Employment as a law professor at a law school approved by the American Bar Association; or
    - (8) Any combination of the above;
- provided in each instance, however, that such employment is available only to licensed attorneys and that the primary duty of the position is to provide legal advice, representation, and/or services.
- (h) For purposes of this rule, the term “active and continuous” shall mean the person devoted a minimum of 80 hours per month and no fewer than 1,000 hours per year to the practice of law during 36 of the 60 months immediately preceding the application.

(i) Except as provided in this ~~paragraph~~subsection (i) and ~~paragraph~~subsection (j) that follows, for purposes of this rule, the term “lawful” shall mean the practice was performed physically without Illinois and either physically within a jurisdiction in which the applicant was licensed or physically within a jurisdiction in which a lawyer not admitted to the bar is permitted to engage in such practice. An applicant relying on practice performed physically in a jurisdiction in which he or she is not admitted to the bar must establish that such practice is permitted by statute, rule, court order, or by written confirmation from the admitting or disciplinary authority of the jurisdiction in which the practice occurred. Practice falling within subparagraph (g)(3) or (g)(6) above shall be considered lawful practice even if performed physically without a jurisdiction in which the applicant is admitted. Practice falling within subparagraph (g)(7) above shall be considered lawful practice even if performed physically without a jurisdiction in which the applicant is admitted, provided that the professor does not appear in court or supervise student court appearances as part of a clinical course or otherwise. If an applicant who temporarily engaged in practice performed physically outside of the jurisdiction where the applicant was licensed demonstrates, to the satisfaction of the Board, that such practice was devoted primarily to matters governed under the law of the jurisdiction where the applicant was licensed, for the benefit of clients or entities physically located within the jurisdiction where the applicant was licensed, such practice shall be considered lawful practice for a period not to exceed two months.;

(j) Practice performed within Illinois pursuant to a Rule 716 license may be deemed lawful and counted toward eligibility for admission on motion, provided all other requirements of Rule 705 are met.

(k) Practice performed without Illinois and within the issuing jurisdiction pursuant to a limited or temporary license may be counted toward eligibility for admission on motion only if the limited or temporary license authorized practice without supervision in the highest court of law in the issuing jurisdiction.

(l) A person who has failed an Illinois bar examination administered within the preceding five years is not eligible for admission on motion.

(m) Admission on motion is not a right. The burden is on the applicant to establish to the satisfaction of the Board that he or she meets each of the foregoing requirements.

Adopted April 3, 1989, effective immediately; amended October 25, 1989, effective immediately; amended June 12, 1992, effective July 1, 1992; amended December 6, 2001, effective immediately; amended September 30, 2002, effective immediately; amended February 6, 2004, effective immediately; amended October 1, 2010, effective January 1, 2011; amended Nov. 26, 2013, effective immediately; amended Oct. 15, 2015, eff. Jan. 1, 2016; amended Sept. 30, 2020, eff. Oct. 1, 2020.