

M.R. 3140

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

Order entered September 26, 2019.

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

Effective October 1, 2019, Illinois Supreme Court Rules 206, 212, 306, 308, 315, and 342 are amended, as follows.

**Amended Rule 206**

**Rule 206. Method of Taking Depositions on Oral Examination**

**(a) Notice of Examination; Time and Place.** A party desiring to take the deposition of any person upon oral examination shall serve notice in writing a reasonable time in advance on the other parties. The notice shall state the time and place for taking the deposition; the name and address of each person to be examined, if known, or, if unknown, information sufficient to identify the deponent; and whether the deposition is for purposes of discovery or for use in evidence.

(1) *Representative Deponent.* A party may in the notice and in a subpoena, if required, name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. The subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization.

(2) *Audio-Visual Recording to be Used.* If a party serving notice of deposition intends to record the deponent's testimony by use of an audio-visual recording device, the notice of deposition must so advise all parties to the deposition. If any other party intends to record the testimony of the witness by use of an audio-visual recording device, notice of that intent must likewise be served upon all other parties a reasonable time in advance. Such notices shall contain the name of the recording-device operator. After notice is given that a deposition will be recorded by an audio-visual recording device, any party may make a motion for relief in the form of a protective order under Rule 201. If a hearing is not held prior to the taking of the deposition, the recording shall be made subject to the court's ruling at a later time.

If the deposition is to be taken pursuant to a subpoena, a copy of the subpoena shall be attached to the notice. On motion of any party upon whom the notice is served, the court, for cause shown, may extend or shorten the time. Unless otherwise agreed by the parties or ordered

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by the court, depositions shall not be taken on Saturdays, Sundays, or court holidays.

**(b) Any Party Entitled to Take Deposition Pursuant to a Notice.** When a notice of the taking of a deposition has been served, any party may take a deposition under the notice, in which case the party shall pay the fees and charges payable by the party at whose instance a deposition is taken.

**(c) Scope and Manner of Examination and Cross-Examination.**

(1) The deponent in a discovery deposition may be examined regarding any matter subject to discovery under these rules. The deponent may be questioned by any party as if under cross-examination.

(2) In an evidence deposition the examination and cross-examination shall be the same as though the deponent were testifying at the trial.

(3) Objections at depositions shall be concise, stating the exact legal nature of the objection.

**(d) Duration of Discovery Deposition.** No discovery deposition of any party or witness shall exceed three hours regardless of the number of parties involved in the case, except by stipulation of all parties or by order upon showing that good cause warrants a lengthier examination.

**(e) Motion to Terminate or Limit Examination.** At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in any manner that unreasonably annoys, embarrasses, or oppresses the deponent or party, the court may order that the examination cease forthwith or may limit the scope and manner of taking the examination as provided by these rules. An examination terminated by the order shall be resumed only upon further order of the court. Upon the demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to present a motion for an order. The court may require any party, attorney or deponent to pay costs or expenses, including reasonable attorney fees, or both, as the court may deem reasonable.

**(f) Record of Examination; Oath; Objections.** The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically, by sound-recording device, by audio-visual recording device, or by any combination of all three. The testimony shall be transcribed at the request of any party. Objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, or to the conduct of any person, and any other objection to the proceedings, shall be included in the deposition. Evidence objected to shall be taken subject to the objection. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written questions to the officer, who shall propound them to the witness and record the answers verbatim.

**(g) Video Depositions.** Except as otherwise provided in this rule, the rules governing the practice, procedures and use of depositions shall apply to depositions recorded by audio-visual equipment.

(1) Depositions which are to be recorded by audio-visual equipment shall begin by the operator of the equipment stating, on camera, (1) the operator's name and address, (2) the date, time and place of the deposition, (3) the caption of the case, (4) the name of the witness, (5)

the party on whose behalf the deposition is being taken, and (6) the party at whose instance the deposition is being recorded on an audio-visual recording device. The officer before whom the deposition is being taken shall state the officer's name and swear the witness on camera. At the conclusion of the deposition the operator shall state on camera that the deposition is concluded. If the deposition requires the use of more than one videotape or other storage medium, the end of each recorded segment and the beginning of each succeeding segment shall be announced on camera by the operator.

(2) The operator shall initially take custody of the audio-visual recording of the deposition and shall run through the recording to determine the exact length of time of the deposition. The operator shall sign an affidavit stating the length of time of the deposition and shall certify that the recording is a true record of the deposition and shall certify that the operator has not edited or otherwise altered the recording. A deposition so certified requires no further proof of authenticity. If requested by any party at the conclusion of the taking of the deposition, the operator shall make a copy of the videotape and deliver it to the party requesting it at the cost of that party.

(3) A recording of a deposition shall be returned to the attorney for the party at whose instance the deposition was recorded. Said attorney is responsible for the safeguarding of the recording and shall permit the viewing of and shall provide a copy of the recording upon the request and at the cost of any party. A recording of a discovery deposition shall not be filed with the court except by leave of court for good cause shown.

(4) A recording of a deposition for use in evidence shall not be filed with the court as a matter of course. At the time that a recording of a deposition is offered into evidence, it shall be filed with the court in the form and manner specified by local rule.

(5) The party at whose instance the deposition is recorded audio-visually shall pay the charges of the recording operator for attending and shall pay any charges associated with filing the audio-visual recording.

(6) A party has the right to use the video recording of a deposition or any part thereof in lieu of reading from a stenographic transcript of the deposition. ~~The recording of a deposition may be presented at trial in lieu of reading from the stenographic transcription of the deposition.~~

**(h) Remote Electronic Means Depositions.** Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.

(1) The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition.

(3) Nothing in this paragraph (h) shall prohibit any party from being with the deponent

during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.

Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; amended February 16, 2011, effective immediately; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended Sept. 26, 2019, eff. Oct. 1, 2019.

Committee Comments

(Sept. 26, 2019)

Paragraph (g)(6)

When the rules of evidence permit the use of deposition testimony at trial and the deposition has been video recorded, the amendment gives a party the right to show the video recording. The amendment addresses only the form of presentation, not the rules about when the use of deposition testimony is permitted.

Committee Comments

(February 16, 2011)

Paragraph (h)

The Committee is of the opinion that the apparent acceptance and utilization of telephonic and other remote electronic means depositions demonstrate that there is no need to require a party to obtain an order on motion to proceed with such depositions absent a written stipulation. Therefore, the Committee recommended the elimination of such a requirement so that the depositions may proceed by notice.

Committee Comments

(Revised October 22, 1999)

Paragraph (a)

Paragraph (a) of this rule is derived from former Rule 19-6(1). The requirement that the notice state the name or title of the person before whom a deposition is to be taken has been eliminated, and the phrase "if the name is not known, a general description" changed to "if unknown, information." The penultimate sentence is new. "Subpoena," of course, includes a subpoena *duces*

*tecum.*

In 1985, Rule 206 was amended to allow audio-visual recordation of depositions upon notice, without a requirement that the parties obtain leave of court.

Paragraph (a) was amended in 1985 to bar depositions from being taken on Saturday, Sunday or court holidays, unless otherwise ordered by the court.

Paragraph (a) was amended in 1987 to add paragraph (a)(1) on representative deponents. The procedure is substantially similar to the procedure set forth in Federal Rule of Civil Procedure 30(b). The intent of the rule is to provide a mechanism for obtaining information without representative depositions. Failure to comply with the rules should call for appropriate sanctions.

Supreme Court Rule 203 was amended contemporaneously with the change in 206(a) in 1987. The elimination of the court's discretion to order depositions "in any other place designated by an order of the court" in old Rule 203 was to protect nonparty witnesses from unwarranted interference with their business and/or personal lives which might otherwise occur when 206(a) is employed.

The amendment to Rule 206(a) is not intended to expand the court's subpoena power in any way. A nonparty, nonresident witness is subject to the court's subpoena power only to the extent authorized by law.

#### Paragraph (b)

Paragraph (b) is new. It covers the situation in which one party serves a notice to take the discovery and evidence depositions of a deponent and after taking the discovery deposition decides not to take the deposition for evidence. The new provision permits the opposing party to proceed to take the evidence deposition without the necessity of serving a new notice.

#### Paragraph (c)

Paragraph (c) covers part of the subject matter covered by former Rule 19-4. The provision dealing with general scope of discovery appearing in former Rule 19-4 has been deleted, since that subject is covered in Rule 201(b). The first sentence of paragraph (c) of this rule is simply a cross-reference to that provision. The second sentence effects a change in Illinois practice. Under former Rule 19-4, a party was permitted to question a deponent as if under cross-examination in a discovery deposition only if the witness was hostile. The prevailing practice appeared to be to examine witnesses as if under cross-examination whether or not they were hostile. Therefore, the committee deleted the requirement of hostility to conform the language of the rule to the actual practice. In subparagraph (c)(2) of this rule, the requirement that examination and cross-examination in the taking of an evidence deposition shall be the same as though the deponent were testifying at the trial is retained.

Subparagraph (c)(3) has been added to eliminate speaking objections.

#### Paragraph (d)

The Committee is of the opinion that the vast majority of all discovery depositions can easily

be concluded within three hours. (For further comment on this issue, see committee comments to Rule 218.)

#### Paragraphs (e) and (f)

Paragraphs (e) and (f) of this rule are derived from former Rules 19-6(3) and (2), respectively, with minor language changes, but no changes in substance.

Paragraph (f) was amended in 1975 to provide for the recording of depositions by audio-visual as well as sound-recording devices.

#### Paragraph (g)

The precautions built into paragraph (g), "Videotaped Depositions," are intended to insure that strict adherence to accepted procedures found in other States that allow videotaping will avoid any problems if videotaping of depositions becomes a widespread practice.

#### Paragraph (h)

The committee is of the opinion that telephonic and other remote electronic means depositions should be allowed by a specific paragraph of Rule 206. It is meant to reduce unnecessary discovery costs. The committee recommends that all other demonstrative evidence to be presented to the deponent be premarked before being provided to the officer administering the oath and the other parties. The parties may agree pursuant to Rule 201(i) to amend or waive any conditions of paragraph (h).

### 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) as an admission made by a party or by an officer or agent of a party in the same manner and to the same extent as any other admission made by that person;~~

(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

(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 Remandment.** Substitution of parties does not affect the right to use depositions previously taken. If any action in any court of this 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.

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.

#### 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 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.

(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.

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 308

#### Rule 308. Certified Questions

**(a) Requests.** When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved. Such a statement may be made at the time of the entry of the order or thereafter on the court's own motion or on motion of any party. The Appellate Court may thereupon in its discretion allow an appeal from the order.

**(b) How Sought.** The appeal will be sought by filing an application for leave to appeal with the clerk of the Appellate Court within 30 days after the entry of the order in the trial court or the making of the prescribed statement by the trial court, whichever is later.

**(c) Application; Answer.** The application shall contain a statement of the facts necessary to an understanding of the question of law determined by the order of the trial court; a statement of the question itself; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The application shall be accompanied by an original supporting record (Rule 328), containing the order appealed from and other parts of the trial court record necessary for the determination of the application for permission to appeal. Within 21 days after the due date of the application, an adverse party may file an answer in opposition, together with an original of a supplementary supporting record containing any additional parts of the record the adverse party desires to have considered by the Appellate Court. The application and answer shall be submitted without oral argument unless otherwise ordered.

**(d)** After the applicant has filed the application 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.

**(e) Record; Briefs.** If leave to appeal is allowed, any party may request that a complete record

on appeal be filed , or the court may order the appellant to file the record within 35 days of the date on which such leave was allowed. The appellant shall file a brief in the reviewing court within the same 35 days. Otherwise the schedule and requirements for briefs shall be as provided in Rules 341 through 344.

**(f)(e) Stay.** The application for permission to appeal or the granting thereof shall not stay proceedings in the trial court unless the trial court or the Appellate Court or a judge thereof shall so order.

Amended effective September 1, 1974; amended July 30, 1979, effective October 15, 1979; amended December 17, 1993, effective February 1, 1994; amended February 26, 2010, effective immediately; amended Dec. 11, 2014, eff. Jan. 1, 2015; amended Oct. 15, 2015, eff. Jan. 1, 2016; amended June 22, 2017, eff. July 1, 2017; amended Sept. 26, 2019, eff. Oct. 1, 2019.

#### Committee Comments (Revised 1979)

This rule was new in 1967. Prior to that time appeals from interlocutory orders had been permitted in Illinois only in a few specified classes of cases. (See former Rule 31 and its predecessor, former section 78 of the Civil Practice Act (Ill. Rev. Stat. 1961, ch. 110, par. 78).) This was also generally true in the Federal courts. In 1958, however, Congress adopted what is now 28 U.S.C. § 1292(b), which permits an interlocutory appeal from other than final orders when the trial court “shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that immediate appeal from the order may materially advance the ultimate termination of the litigation.” The court of appeals may then “in its discretion” permit the appeal to be taken. Thus, this type of interlocutory appeal is allowed when both the trial and appellate courts agree that an appeal will expedite the disposition of the litigation, and also that there is a substantial question of law to be decided. The appellate courts themselves can insure that this authority to allow interlocutory appeals is not abused. This power has been sparingly exercised in the Federal courts, but it has proved valuable.

This rule establishes a similar procedure for Illinois. One change from the Federal rule is to eliminate the requirement that the question raised be a “controlling” one. The meaning of “controlling” has not been clear, despite many cases on the point,<sup>7</sup> and experience has shown that sometimes an important question of law that only arguably could be said to be controlling should be heard on appeal without awaiting final judgment.

The 1964 judicial article authorized the Supreme Court to provide by rule for appeals to the Appellate Court of other than final judgments of the circuit court. Arguably, however, it made no provision for rules permitting direct appeal to the Supreme Court except in the case of final judgments. Accordingly, Rule 308 was made applicable only to appeals to the Appellate Court, but it permits the Appellate Court to allow interlocutory appeals in classes of cases in which the *final* judgment is appealable only to the Supreme Court. Though the reference to “final judgments” in section 5 of the 1964 judicial article was not carried forward into article VI, section 4 of the new constitution, direct appeals to the Supreme Court remain limited to appeals from final judgments. See Rule 302.

Normally the interlocutory appeal will not stay proceedings in the trial court. The case may



proceed in that court unless the trial court or the Appellate Court or a judge thereof otherwise orders. This will discourage an attempt to take an interlocutory appeal with a motive of delay.

In 1974, paragraph (b) was amended to substitute the word “application” appearing in the last sentence of the paragraph for the word “petition” to make the terminology uniform. At the same time paragraph (d) was amended to insert the clause “the appellant shall file his brief in the reviewing court within 35 days of the date on which such leave was allowed.” This requirement formerly appeared in Rule 343(a). See the committee comments to Rule 306, paragraph (g).

Until 1979, paragraph (d) provided that, if appeal were allowed, “[e]xcerpts from record or an abstract shall be prepared and filed as provided in Rule 342.” In that year Rule 342 was amended to eliminate altogether the practice of duplicating and filing excerpts from the record and to provide that no abstract shall be filed unless by order of the reviewing court. Accordingly, paragraph (d) was amended to reflect this change. See the committee comments to Rule 342.

### **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.

(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).~~only the appendix.~~

**(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 ~~within such 21-day period~~. An answer shall set forth reasons why the petition should not be granted, and shall conform, to the extent appropriate, to the form specified in this rule for the petition, omitting the items (1), (2), (3), (4)

and (6) set forth in paragraph (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), only the appendix. No reply to the answer shall be filed. If the respondent does not file an answer or otherwise appear but wants notice of the disposition of the petition for leave to appeal, a 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, the appellant's arguments in opposition shall be included in the reply brief and the appellee may file a reply brief confined strictly to the appellant's ~~these~~ arguments in opposition

to the appellee's request for cross-relief within 14 days of the due date of appellant's combined reply-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.

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 342**

**Rule 342. Appendix to the Brief.** The appellant’s brief shall include, as an appendix, a table of contents to the appendix, the judgment appealed from, any opinion, memorandum, or findings of fact filed or entered by the trial judge or by any administrative agency or its officers, any pleadings or other materials from the record that are the basis of the appeal or pertinent to it, the notice of appeal, and a complete table of contents, with page references, of the record on appeal. The table shall state:

- (1) the nature of each document, order, or exhibit, *e.g.*, complaint, judgment, notice of appeal, will, trust deed, contract, and the like;
- (2) in the case of pleadings, motions, notices of appeal, orders, and judgments, the date of filing or entry; and
- (3) the names of all witnesses and the pages on which their direct examination, cross examination, and redirect examination begin.

In addition, in cases involving proceedings to review orders of the Illinois Workers’ Compensation Commission, the appellant’s brief shall also include as part of the appendix decisions of the arbitrator and the Commission.

The appellee's brief and the appellant's reply brief may include in a supplementary appendix other materials from the record that also are the basis of the appeal or are essential to any understanding of the issues raised in the appeal.

The pages of the appendix shall be numbered consecutively with the letter "A" preceding the number of each page. If an appendix would expand the size of the PDF comprising the combined brief and appendix to greater than 150 megabytes, it may be filed as a separate PDF and labeled "Separate Appendix."

Amended October 21, 1969, effective January 1, 1970; amended July 30, 1979, effective October 15, 1979; amended June 1, 1984, effective July 1, 1984; amended May 18, 1988, effective August 1, 1988; amended December 17, 1993, effective February 1, 1994; amended October 15, 2004, effective January 1, 2005; amended June 22, 2017, eff. July 1, 2017; amended Sept. 26, 2019, eff. Oct. 1, 2019.

Commentary  
(December 17, 1993)

A separate table of contents to the appendix is added as a requirement under paragraph (a). The rule also provides that all pages of the appendix must be numbered to permit easy reference.

Committee Comments  
(Revised June 1, 1984)

Rule 342 was substantially rewritten in 1979. Prior to 1964 it was required that the appellant prepare and file an abstract of the record on appeal. In that year former Rule 36-1 was adopted (29 Ill. 2d R. 36-1), giving the appellant in appeals referable to magistrates the option of substituting for the abstract excerpts from the record, containing the judgment or order appealed from, the notice of appeal, and "the parts of the record deemed essential for the judges of the reviewing court to read in order to decide the issues presented" (29 Ill. 2d R. 36-1(8)). Provision was made for an exchange of designations of items to be included in the excerpts, the excerpts to be filed by the appellant no later than 14 days after the due date of the appellee's brief. At the time it was thought that reproduction of the actual pages from the record was at once less time consuming, and therefore less expensive, than the preparation of a narrative statement, and also more accurate. Rule 342, effective January 1, 1967, extended the provision for the filing of excerpts from record to cover all appeals. Extensive amendments were adopted effective January 1, 1970.

As revised in 1979, Rule 342 requires that the appellant include in its brief an appendix containing a copy of the judgment appealed from, any opinion, memorandum, or findings of fact filed or entered by the trial judge, the notice of appeal, and a table of contents of the record (paragraph (a)). Otherwise it is not required that any parts of the record be duplicated. All reference to excerpts of record were therefore deleted. The contemplation is that in most instances the appeal will be heard on the original papers. It is provided, however, that the reviewing court may order that an abstract be prepared and filed. Therefore the provisions of the rule governing the contents, form, and filing of an abstract are retained. Appropriate changes were made in other rules that

included reference to the preparation and filing of excerpts from the record. (See Rules 306, 307, 308, 317, 344, 607, and 612.) Since in most cases there will no longer be either abstract or excerpts, the duty of the parties to make a fair and accurate statement of the facts in their briefs, always important, has become even more so, and this duty has been emphasized by amendment to Rules 315(b)(4) and 341(e)(6).

In 1984 subparagraph (a) was amended to require that copies of the decisions of both the arbitrator and the Commission be included in the appendix in all cases involving proceedings to review orders of the Industrial Commission.