

**Proposal 04-03
(P.R. 0121)**

Offered by the Illinois State Bar Association and the Appellate Lawyers Association

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 at least one judge of that panel files 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; ~~Contents~~

(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 21 days after entry of the judgment of the Appellate Court, or within the same 21 days file with the Appellate Court an affidavit of intent or a verification by certification under section 1-109 of the Code of Civil Procedure of intent to file a petition for leave, and file the petition 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 21 days after the entry of the order denying the petition for rehearing, or within the same 21 days must file with the Appellate Court an affidavit or a section 1-109 certification of intent to file a petition, and file the petition within 35 days after entry of such

order. If a petition is granted, the petition for leave to appeal must be filed within 21 days of the entry of the judgment on rehearing, or if within the same 21 days an affidavit or a section 1-109 certification of intent is filed with the Appellate Court, then within 35 days after the entry of such judgment. 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, or an affidavit of intent to do so, shall be the same as for published opinions, except that if the party who prevailed on an issue in the appellate court timely files a motion to publish a Rule 23 order pursuant to Rule 23(f), and if the motion is granted, a non-moving party may file a petition for leave to appeal, or an affidavit of intent, within 21 days after the entry of the order granting the motion to publish. The filing of a Rule 23(f) publication motion shall not invalidate a previously filed petition for leave to appeal or an affidavit of intent to file 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 an affidavit of intent to seek review was filed with the Appellate Court and, if so, the date it was filed; 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 ~~for reversal of~~ 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, *e.g.*, R. C7 ro R. 7, or to the pages of the abstract, if one has been filed, *e.g.*, A. 7. Exhibits may be cited by references to pages of the record on appeal, or of the abstract, or by exhibit number followed by the page number within the exhibit, *e.g.*, P1. Ex. 1, p. 6;

(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 The failure to include an issue in the petition shall not constitute a waiver of the issue

if the petition is allowed; and

(6) an appendix which shall include a copy of the opinion or order of the Appellate Court, a copy of the affidavit or the section 1-109 certification of intent to file a petition if an affidavit or a certification was filed with the Appellate Court, and any documents from the record which are deemed necessary to the consideration of the petition.

~~(c)~~ **(d) Format; Service; Filing.** The petition shall otherwise be prepared, duplicated, served, and filed in accordance with the requirements for briefs as set forth in Rules 341 through 344, except that it shall be limited to 20 pages excluding only the appendix.

~~(d)~~ **(e) Records; Abstracts.** If an abstract has been filed in the Appellate Court, the petitioner shall file two or, if available, eight copies thereof in the Supreme Court, and for that purpose the clerk of the Appellate Court, when requested, shall release to the petitioner any available copies thereof. The clerk of the Supreme Court shall send 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 and at the expense of the petitioner, shall transmit to the clerk of the Supreme Court the record on appeal that was filed in the Appellate Court and a certified copy of the Appellate Court record. If leave to appeal is not granted, any certified papers and, to the extent available, copies of abstracts shall be returned forthwith to the clerk of the Appellate Court.

~~(e)~~ **(f) Answer.** The respondent need not but may file an answer, with proof of service, within 14 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 14-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 (b) except to the extent that correction of the petition is considered necessary. The answer shall be prepared, duplicated, served, and filed in accordance with the requirements for briefs except that it shall be limited to 20 pages excluding 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 letter requesting such notice should be directed to the clerk in Springfield.

~~(f)~~ **(g) Abstracts; Transmittal of Trial Court Record if Petition Is Granted.** If the

petition is granted, and to the extent that copies have not already been filed, the appellant shall file 20 copies of the abstract, as filed in the Appellate Court, within the time for the filing of his brief. If no abstract was filed in the Appellate Court, but the Supreme Court so orders, an abstract shall be prepared and filed in accordance with Rule 342. Upon the request of any party made at any time before oral argument or upon direction of the Supreme Court, the clerk of the Appellate Court, at the expense of the petitioner, shall transmit to the Supreme Court the record on appeal that was filed in the Appellate Court and the Appellate Court record, if not already filed in the Supreme Court.

(g) (h) Briefs. 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 in lieu of or supplemental thereto. 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 a copy of 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(e)(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 in lieu of or supplemental thereto. 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 an additional brief, and within the same time shall file a copy of the notice with the clerk of the Supreme Court. If the appellee elects to file an additional 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, 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's arguments in opposition shall be included in the reply brief and the appellee may file a reply brief confined strictly to those arguments within 14 days of the due date of appellant's reply brief. If the brief of the appellee contains arguments in support of cross-relief, the cover of the brief shall be captioned: "Brief of Appellee, Cross-Relief Requested."

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 344.

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.

(h) (i) Oral Argument. Oral argument may be requested as provided in Rule 352(a).

Committee Comments

Paragraph (b) is amended to separate the provision on the time for filing a petition for leave to appeal or affidavit of intent, which remains in paragraph (b), from the provision on the content of the petition, which becomes a new paragraph (c). The subsequent paragraphs are re-lettered accordingly.

Paragraph (b) is 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.

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 21 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 ~~may~~ shall issue ~~7~~ not earlier than 21 days after entry of the order denying the petition unless the court upon motion orders the time shortened or enlarged.

(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 either files in the Appellate Court an affidavit, which may be executed by the party or by the party's attorney, that the party in good faith intends to seek such review or 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