

Proposal 13-09
Amends Supreme Court Rules 361 and 367
Offered by the Appellate Lawyers Association

Rule 361. Motions in Reviewing Court

(a) Content of Motions; Supporting Record; Other Supporting Papers. Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion. Motions shall be in writing and shall state the relief sought and the grounds therefor. If the record has not been filed the movant shall file with the motion an appropriate supporting record (Rule 328). When the motion is based on facts that do not appear of record it shall be supported by affidavit. Argument not contained in the motion may be made in a supporting memorandum.

If counsel has conferred with opposing counsel and opposing counsel has no objection to the motion, that fact should be stated in the motion in order to allow the court to rule upon the motion without waiting until the time for filing responses has passed.

(b) In Appellate Court; In Supreme Court While in Session. If the motion is filed in the Appellate Court, or in the Supreme Court while in session, the motion shall be served, presented, and filed as follows:

(1) The motion, together with proof of service, shall be filed with the clerk. Service and filing will be excused only in case of necessity.

(2) Responses to a motion shall be in writing and be filed, with proof of service, within 5 days after personal, e-mail or facsimile service of the motion, or 10 days after mailing of the motion if service is by mail, or 10 days after delivery to a third-party commercial carrier if service is by delivery to a third-party commercial carrier, or within such further time as the court or a judge thereof may allow. Except by order of court, replies to responses will not be allowed and oral arguments on motions will not be heard.

(3) Motions, supporting papers, and responses filed in the Supreme Court shall consist of an original and one copy and in the Appellate Court an original and three copies (in workers' compensation cases arising under Rule 22(g) an original and five copies). A proposed order phrased in the alternative (*e.g.*, "Allowed" or "Denied") shall be submitted with each motion, and a copy shall be served upon all counsel of record. A copy of the style of such orders may be obtained from the clerk's office. No motion shall be accepted by the clerk unless accompanied by such a proposed order.

(c) In Supreme Court While Not in Session.

(1) If a rule provides that relief may be granted "by the court or a justice thereof," the motion shall be directed to only one justice. Such a motion shall be directed to the justice of the judicial district involved or, in Cook County, to the justice designated to hear

motions. For the second, third, fourth, and fifth judicial districts, the original motion and one copy shall be filed with the clerk in Springfield, together with a proof of service and a proposed order in compliance with paragraph (b)(3). The response to a motion shall be directed to the justice within the time provided in paragraph (b)(2), and the original and one copy shall be filed with the clerk in Springfield. For the first judicial district (Cook County), the motion and one copy, together with a proof of service and a proposed order, shall be filed with the clerk in the Chicago satellite office. The deputy clerk will direct the motion to the justice designated to hear motions. Responses to a motion shall be filed with the clerk in the Chicago satellite office within the time provided in paragraph (b)(2).

(2) If the motion seeks relief that under these rules requires action by the full court, and the case arises from the second, third, fourth, or fifth judicial district, the movant shall file the original and eight copies with the clerk in Springfield. Responses to a motion and eight copies shall be filed with the clerk in Springfield within the time provided in paragraph (b)(2) or, if applicable, within the time provided in Rule 381 or 383. If the case arises from the first judicial district (Cook County), the movant shall file an original and eight copies with the clerk in the Chicago satellite office. Responses to a motion and eight copies shall be filed with the clerk in Chicago within the time provided in paragraph (b)(2) or, if applicable, within the time provided in Rule 381 or 383. Regardless of district, a proof of service in the form required in the preceding paragraph shall accompany the motion.

(d) When Acted Upon. Except in extraordinary circumstances, or where opposing counsel has indicated no objections, no motion will be acted upon until the time for filing responses has expired.

(e) Corrections. The clerk is authorized to make corrections in any document of a party to any pending case upon receipt of written request from that party together with proof that a copy of the request has been transmitted to all other parties.

(f) Motions for Extensions of Time. Motions for extensions of time shall be supported by affidavit or verification by certification under section 1–109 of the Code of Civil Procedure of counsel or the party showing the number of previous extensions granted and the reason for each extension. Any affidavit shall be sworn to before a person who has authority under the law to administer oaths.

(g) Emergency Motions and Bail Motions. Each District of the Appellate Court shall promulgate and publish rules setting forth the procedure for emergency motions, including notice requirements. Subject to the rules of each District, an emergency motion must specify the nature of the emergency and the grounds for the specific relief requested. Except in the most extreme and compelling circumstances, a motion for an extension of time will not be considered an emergency. Motions regarding bail in criminal cases or bonds in civil and criminal cases shall be considered emergency motions if so designated by the movant.

(h) Dispositive Motions.

(1) Dispositive motions in the Appellate Court should be ruled upon promptly after the filing of the objection to the motion, if any. A dispositive motion may be taken with the case where the court cannot resolve the motion without consideration of the full record on appeal and full briefing of the merits.

(2) For purposes of this Rule 361(h), "dispositive motion" means any motion challenging the Appellate Court's jurisdiction or raising any other issue that could result in the dismissal of any portion of an appeal or cross appeal without a decision on the merits of that portion of the appeal or cross-appeal.

(3) A dispositive motion shall include:

(a) a discussion of the facts and issues on appeal sufficient to enable the court to consider the dispositive motion;

(b) a discussion of the facts and law supporting the dismissal of the appeal or cross-appeal or portion thereof prior to a determination of the appeal on the merits;

(c) a discussion of the relationship, if any, of the purported dispositive issue to the other issues on appeal;

(d) an appropriate supporting record containing (i) if the record on appeal has not yet been filed, the parts of the trial court record necessary to support the dispositive motion; and (ii) if necessary, any evidence of relevant matters not of record in accordance with Rule 361(a).

(4) An objection to a dispositive motion shall address each of the required portions of the motion, and if the record on appeal has not yet been filed, shall include any parts of the trial court record not submitted by the movant that is necessary to oppose the motion, and may include evidence of relevant matters not of record in accordance with Rule 361(a).

(5) The Appellate Court may order additional briefing, record submissions, or oral argument as it deems appropriate.

Rule 367. Rehearing in Reviewing Court

(a) Time; Length. A petition for rehearing may be filed within 21 days after the filing of the judgment, unless on motion the time is shortened or enlarged by the court or a judge thereof. Motions to extend the time for petitioning for rehearing are not favored and will be allowed only in the most extreme and compelling circumstances. Unless authorized by the court or a judge thereof, the petition shall be limited to 27 pages and be supported by a certificate of compliance in accordance with Rule 341(c).

(b) Contents. The petition shall state briefly the points claimed to have been overlooked or misapprehended by the court, with proper reference to the particular portion of the record and brief relied upon, and with authorities and argument, concisely stated in support of the points. Reargument of the case shall not be made in the petition.

(c) Form; Copies; Service; Notification of Reporter. The number of copies of the petition, and of any answer or reply (see paragraph (d)), the form, cover and service shall conform to the requirements for briefs (see Rule 341), except that, in the Supreme Court, petitions for rehearing shall be delivered or mailed by first-class mail or delivered by third-party commercial carrier, and a copy of the petition or any motion seeking to change the time for filing the petition shall also be delivered or mailed by first-class mail or delivered by third-party commercial carrier to the Reporter of Decisions, P.O. Box 3456, Bloomington, Illinois 61702-3456, and a certificate of mailing or delivery shall be supplied to the clerk of the Supreme Court.

(d) Answer; Reply; Oral Argument. No answer to a petition for rehearing will be received unless requested by the court or unless the petition is granted. No substantive change in the relief granted or denied by the reviewing court may be made on denial of rehearing unless an answer has been requested. If the petition is granted or if an answer is requested, the opposing party shall have 21 days from the request or the granting of the rehearing to answer the petition, and petitioner shall have 14 days after the due date of the answer within which to file a reply. Unless authorized by the court or a judge thereof, the answer shall be limited to 27 pages, the reply shall be limited to 10 pages, and each must be supported by a certificate of compliance in accordance with Rule 341(c). Three copies of each shall be served on opposing counsel and proof of service filed with the clerk. The original briefs of the parties, and the petition for rehearing, the answer, and the reply shall stand as briefs on the rehearing. Oral argument will be permitted only if ordered by the court on its own motion.

(e) Limitation on Petitions in Appellate Court. When the Appellate Court has acted upon a petition for rehearing and entered judgment on rehearing no further petitions for rehearing shall be filed in that court.