

M.R. 3140

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

Order entered July 27, 2006.

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

Effective September 1, 2006, Supreme Court Rule 18 is adopted and Supreme Court Rules 19, 302, 303, 606, and 612 are amended as follows:

New Rule 18

Rule 18. Findings of Unconstitutionality

A court shall not find unconstitutional a statute, ordinance, regulation or other law, unless:

(a) the court makes the finding in a written order or opinion, or in an oral statement on the record that is transcribed;

(b) such order or opinion clearly identifies what portion(s) of the statute, ordinance, regulation or other law is being held unconstitutional;

(c) such order or opinion clearly sets forth the specific ground(s) for the finding of unconstitutionality, including:

(1) the constitutional provision(s) upon which the finding of unconstitutionality is based;

(2) whether the statute, ordinance, regulation or other law is being found unconstitutional on its face, as applied to the case *sub judice*, or both;

(3) that the statute, ordinance, regulation or other law being held

unconstitutional cannot reasonably be construed in a manner that would preserve its validity;

(4) that the finding of unconstitutionality is necessary to the decision or judgment rendered, and that such decision or judgment cannot rest upon an alternative ground; and

(5) that the notice required by Rule 19 has been served, and that those served with such notice have been given adequate time and opportunity under the circumstances to defend the statute, ordinance, regulation or other law challenged.

Adopted July 27, 2006, effective September 1, 2006.

Committee Comment

(July 27, 2006)

This rule is intended to implement the principles encapsulated in *People v. Cornelius*, 213 Ill. 2d 178 (2004), and *In re Parentage of John M.*, 212 Ill. 2d 253 (2004), concerning the duties incumbent upon the circuit court when declaring state statutes to be unconstitutional.

Amended Rule 19

Rule 19. Notice of Claim of Unconstitutionality or Preemption by Federal Law

(a) Notice Required. In any cause or proceeding in which the constitutionality or preemption by federal law of a statute, ordinance, ~~or~~ administrative regulation, or other law affecting the public interest is raised, and to which action or proceeding the State or the political subdivision, agency, or officer affected is not already a party, the litigant raising the constitutional or preemption issue shall serve an appropriate notice thereof on the Attorney General, State's Attorney, municipal counsel or agency attorney, as the case may be.

(b) Contents and Time for Filing Notice. The notice shall identify the particular statute, ordinance, ~~or regulation, or other law,~~ and shall briefly describe the nature of the constitutional or preemption challenge. The notice shall be served at the time of suit, answer or counterclaim, if ~~constitutionality the challenge~~ is raised at that level, or promptly after the constitutional or preemption question arises as a result of a circuit or reviewing court ruling or judgment.

(c) Purpose of Notice. The purpose of such notice shall be to afford the State, political subdivision, agency or officer, as the case may be, the opportunity, but not the obligation, to intervene in the cause or proceeding for the purpose of defending ~~the constitutionality of~~ the law or regulation challenged. The election to intervene shall be subject to applicable provisions of law governing intervention or impleading of interested parties.

Adopted February 21, 1986, effective August 1, 1986; amended July 27, 2006, effective September 1, 2006.

Amended Rule 302

Rule 302. Direct Appeals to the Supreme Court

(a) Cases Directly Appealable. Appeals from final judgments of circuit courts shall be taken directly to the Supreme Court (1) in cases in which a statute of the United States or of this ~~S~~state has been held invalid, and (2) in proceedings commenced under Rule 21(c) of this court. For purposes of this rule, invalidity does not include a determination that a statute of this state is preempted by federal law.

(b) Cases in Which the Public Interest Requires Expeditious Determination. After the filing of the notice of appeal to the Appellate Court in a case in which the public interest requires prompt adjudication by the Supreme Court, the Supreme Court or a justice thereof may order that the appeal be taken directly to it. Upon the entry of such an order any documents already filed in the Appellate Court shall be transmitted by the clerk of that court to the clerk of the Supreme Court. From that point the case shall proceed in all respects as though the appeal had been taken directly to the Supreme Court.

(c) Summary Disposition.

(1) The Supreme Court, after the briefs have been filed, may dispose of any case without oral argument or opinion if no substantial question is presented or if jurisdiction is lacking.

(2) The Supreme Court, on its own motion or upon the motion of a party, before or after any brief has been filed or oral argument held, may summarily vacate and remand a judgment of the circuit court for noncompliance with Rule 18. Such vacatur shall not constitute a determination on the merits of the constitutional question presented.

Amended effective July 1, 1971. (An amendment of June 29, 1978, was to have abolished direct appeals in proceedings to review orders of the Industrial Commission. The amendment was to have been effective January 1, 1979. On December 1, 1978, the effective date of the amendment was postponed until July 1, 1979. On June 1, 1979, the amendment was rescinded.) Amended August 9, 1983, effective October 1, 1983; 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 July 27, 2006, effective September 1, 2006.

Committee Comment

(July 27, 2006)

The amendment to Rule 302(c) recognizes that the Supreme Court may summarily vacate and remand any circuit court judgment that fails to comply with Rule 18.

Amended Rule 303

Rule 303. Appeals from Final Judgments of the Circuit Court in Civil Cases

(a) Time; Filing; Transmission of Copy.

(1) Except as provided in paragraph (b) below, the notice of appeal

must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order, irrespective of whether the circuit court had entered a series of final orders that were modified pursuant to postjudgment motions. A judgment or order is not final and appealable while a Rule 137 claim remains pending unless the court enters a finding pursuant to Rule 304(a).

(2) When a timely postjudgment motion has been filed by any party, whether in a jury case or a nonjury case, a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion shall have no effect and shall be withdrawn by the party who filed it, by moving for dismissal pursuant to Rule 309. This is so whether the timely postjudgment motion was filed before or after the date on which the notice of appeal was filed. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the postjudgment motion, as provided in subparagraph (a)(1) of this rule. No request for reconsideration of a ruling on a postjudgment motion will toll the running of the time within which a notice of appeal must be filed under this rule. A party who filed a premature notice of appeal will not be required to pay a filing fee for a future appeal in the same case if, at the time of filing the future appeal, the party presents the receipt for the fee paid for filing the premature notice of appeal and a copy of the circuit court order dismissing the premature appeal.

(3) If a timely notice of appeal is filed and served by a party, any other party, within 10 days after service upon him or her, or within 30 days from the entry of the judgment or order being appealed, or within 30 days of the entry of the order disposing of the last pending postjudgment motion, whichever is later, may join in the appeal, appeal separately, or cross-appeal by filing a notice of appeal, indicating which type of appeal is being taken.

(4) Within five days after the filing of a notice of appeal, or an amendment of a notice of appeal filed in the circuit court pursuant to subparagraph (b)(4) of this rule, the clerk of the circuit court shall transmit to the clerk of the court to which the appeal is being taken a

copy of the notice of appeal or of the amendment.

(b) Form and Contents of Notice of Appeal.

(1) The notice of appeal shall be captioned as follows:

(i) At the top shall appear the statement “Appeal to the _____ Court,” naming the court to which the appeal is taken, and below this shall be the statement “From the Circuit Court of _____,” naming the court from which the appeal is taken.

(ii) It shall bear the title of the case, naming and designating the parties in the same manner as in the circuit court and adding the further designation “appellant” or “appellee,” *e.g.*, “Plaintiff-Appellee.”

(iii) It shall be designated “Notice of Appeal,” “Joining Prior Appeal,” “Separate Appeal,” or “Cross-Appeal,” as appropriate.

(2) It shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court.

(3) A notice of appeal filed pursuant to Rule 302(a)(1) from a judgment of a circuit court holding unconstitutional a statute of the United States or of this state shall have appended thereto a copy of the court’s findings made in compliance with Rule 18.

~~(3)~~ (4) It shall contain the signature and address of each appellant or appellant’s attorney.

~~(4)~~ (5) The notice of appeal may be amended without leave of court within the original 30-day period to file the notice as set forth in paragraph (a) above. Thereafter it may be amended only on motion, in the reviewing court, pursuant to paragraph (d) of this rule. Amendments relate back to the time of the filing of the notice of appeal.

(c) Service of Notice of Appeal. The party filing the notice of appeal or an amendment as of right, shall, within 7 days, file a notice of filing with the reviewing court and serve a copy of the notice of appeal upon every other party and upon any other person or officer entitled by law to notice. Proof of service, as provided by Rule 12, shall be filed with the notice.

(d) Extension of Time in Certain Circumstances. On motion supported by a showing of reasonable excuse for failure to file a notice of appeal on time, accompanied by the proposed notice of appeal and the filing fee, filed in the reviewing court within 30 days after expiration of the time

for filing a notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing. If the reviewing court allows leave to file a late notice of appeal, any other party may, within 10 days of the order allowing the filing of the late notice, join in the appeal separately or cross-appeal as set forth in Rule 303(a)(3).

(e) Docketing. Upon receipt of the copy of the notice of appeal transmitted to the reviewing court pursuant to paragraph (a) of this rule, or receipt of a motion for leave to appeal under paragraph (d) of this rule, the clerk of the reviewing court shall enter the appeal upon the docket.

Amended effective January 12, 1967; amended effective January 1, 1970; amended October 21, 1969, effective January 1, 1970; amended effective July 1, 1971; amended effective September 1, 1974; amended October 1, 1976, effective November 15, 1976; amended July 30, 1979, effective October 15, 1979; amended August 9, 1983, effective October 1, 1983; amended April 27, 1984, effective July 1, 1984; amended December 17, 1993, effective February 1, 1994; corrected March 18, 2005, effective immediately ; amended October 14, 2005, effective January 1, 2006; amended July 27, 2006, effective September 1, 2006.

Amended Rule 606

Rule 606. Perfection of Appeal

(a) How Perfected. In cases in which a death sentence is imposed, an appeal is automatically perfected without any action by the defendant or his counsel. In other cases appeals shall be perfected by filing a notice of appeal with the clerk of the trial court. The notice may be signed by the appellant or his attorney. If the defendant so requests in open court at the time he is advised of his right to appeal or subsequently in writing, the clerk of the trial court shall prepare, sign, and file forthwith a notice of appeal for the defendant. No step in the perfection of the appeal other than the filing of the notice of appeal is jurisdictional.

(b) Time. Except as provided in Rule 604(d), the notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from or if a motion directed against the judgment is timely filed, within 30 days after the entry of the order disposing

of the motion. When a timely posttrial or postsentencing motion directed against the judgment has been filed by counsel or by defendant, if not represented by counsel, any notice of appeal filed before the entry of the order disposing of all pending postjudgment motions shall have no effect and shall be stricken by the trial court. Upon striking the notice of appeal, the trial court shall forward to the appellate court within 5 days a copy of the order striking the notice of appeal, showing by whom it was filed and the date on which it was filed. This rule applies whether the timely postjudgment motion was filed before or after the date on which the notice of appeal was filed. A new notice of appeal must be filed within 30 days following the entry of the order disposing of all timely postjudgment motions. Within 5 days of its being so filed a copy of the notice of appeal or an amendment of the notice of appeal shall be transmitted by the clerk of the circuit court to the clerk of the court to which the appeal is taken. Except as provided in paragraph (c) below, and in Rule 604(d), no appeal may be taken from a trial court to a reviewing court after the expiration of 30 days from the entry of the order or judgment from which the appeal is taken. The clerk of the appellate court shall notify any party whose appeal has been dismissed under this rule.

(c) Extension of Time in Certain Circumstances. On motion supported by a showing of reasonable excuse for failing to file a notice of appeal on time filed in the reviewing court within 30 days of the expiration of the time for filing the notice of appeal, or on motion supported by a showing by affidavit that there is merit to the appeal and that the failure to file a notice of appeal on time was not due to appellant's culpable negligence, filed in the reviewing court within six months of the expiration of the time for filing the notice of appeal, in either case accompanied by the proposed notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing.

(d) Form of Notice of Appeal. The notice of appeal shall be substantially in the following form:

In the Circuit Court of the _____ Judicial Circuit,
_____ County, Illinois,
(or In the Circuit Court of Cook County)

THE PEOPLE OF THE STATE OF ILLINOIS,

v.

No. _____

Notice of Appeal

An appeal is taken from the order or judgment described below.

(1) Court to which appeal is taken: _____

(2) Name of appellant and address to which notices shall be sent.

Name: _____

Address: _____

(3) Name and address of appellant's attorney on appeal.

Name: _____

Address: _____

If appellant is indigent and has no attorney, does he want one appointed?

(4) Date of judgment or order: _____

(5) Offense of which convicted: _____

(6) Sentence: _____

(7) If appeal is not from a conviction, nature of order appealed from:

(8) If the appeal is from a judgment of a circuit court holding unconstitutional a statute of the United States or of this state, a copy of the court's findings made in compliance with Rule 18 shall be appended to the notice of appeal.

(Signed) _____

(May be signed by appellant, attorney for appellant, or clerk of circuit court.)

The notice of appeal may be amended as provided in Rule 303(b)(4).

(e) Copies of Notice of Appeal to be Sent by Clerk.

(1) *When Defendant Is Appellant and Action Is Prosecuted by the State.* When the defendant is the appellant and the action was prosecuted by the State, the clerk shall send a copy of the notice of appeal to the State's Attorney of the county in which the judgment was entered and a copy to the Attorney General at his Springfield, Illinois, office.

(2) *When Defendant Is Appellant and the Action Is Prosecuted by a Governmental Entity Other Than the State.* If the defendant is the appellant and the action was prosecuted by a governmental entity other than the State for the violation of an ordinance, the copy of the notice of appeal shall be sent to the chief legal officer of the entity (*e.g.*, corporation counsel, city attorney), or if his name and address do not appear of record, then to the chief administrative officer of the entity at his official address.

(3) *When the Prosecuting Entity Is the Appellant.* When the State or other prosecuting entity is the appellant a copy of the notice of appeal shall be sent to the defendant and a copy to his counsel.

(f) Docketing. Upon receipt of the copy of the notice of appeal transmitted to the reviewing court pursuant to paragraph (a) of this rule, or the entry of an order granting a motion for leave to appeal under paragraph (c) of this rule, the clerk of the reviewing court shall enter the appeal upon the docket.

(g) Docketing Statement; Filing Fee. Within 14 days after the filing of the notice of appeal and pursuant to notice to the appellee's attorney, the party filing the notice of appeal shall file with the clerk of the reviewing court a docketing statement, together with proof of service thereof, and the required filing fee of \$25. The form and contents of the docketing statement shall be as follows:

Docket Number in the Reviewing Court

Case Title (Complete)	Appeal From _____ County
	Circuit Court No. _____
	Date of Notice of Appeal

Trial Judge _____

Felony () Misdemeanor ()

In Custody () Out on Bond ()

DOCKETING STATEMENT

(Criminal)

Counsel On Appeal

For Appellant(s)

Name: _____

Address: _____

Telephone: _____

Trial Counsel,

If Different

Name: _____

Address: _____

Telephone: _____

Counsel On Appeal

For Appellee(s)

Name: _____

Address: _____

Telephone: _____

Court Reporting Personnel

(If more space is needed, use other side.)

Name: _____

Address: _____

Telephone: _____

file a short responsive statement with the clerk of the reviewing court.

Amended October 21, 1969, effective January 1, 1970; amended effective July 1, 1971, July 1, 1975, and February 17, 1977; amended July 15, 1979, effective October 15, 1979; amended April 27, 1984, effective July 1, 1984; amended August 27, 1999, effective immediately; amended October 22, 1999, effective December 1, 1999; amended December 13, 2005, effective immediately; amended July 27, 2006, effective September 1, 2006.

Amended Rule 612

Rule 612. Procedural Matters Which Are Governed by Civil Appeals Rules

The following civil appeals rules apply to criminal appeals insofar as appropriate:

(a) Dismissal of appeals by the trial court: Rule 309.

(b) Appeals to the Supreme Court: Rules 302(b), 302(c), 315, 316, 317, and 318.

(c) Procedure if no verbatim transcript is available and procedure for an agreed statement of facts: Rules 323(c) and (d).

(d) Preparation and certification of record on appeal by clerk: Rule 324. (The certification in a death sentence case also shall make reference to the duplicate record.)

(e) Transmission of record on appeal or certificate in lieu of record: Rule 325. (If the defendant is represented by court-appointed counsel, no fees need be paid to the clerk of the trial court. If a certificate in lieu of record is filed in a death sentence case, the duplicate record as provided by Rule 608 still must be timely filed in the Supreme Court.)

(f) Notice of filing: Rule 327.

(g) Amendment of the record on appeal: Rule 329. (In a death sentence case, in addition to any supplemental record which may be filed pursuant to Rule 329, a duplicate supplemental record must be certified and filed.)

(h) Return of record on appeal: Rule 331. (In a death sentence case, the duplicate record need not be returned to the clerk of the trial court.)

- (i) Contents of briefs: Rule 341.
- (j) Abstract: Rule 342.
- (k) Times for filing and serving briefs: Rule 343.
- (l) Number of copies and form and method of reproduction of briefs and abstract: Rule 344.
- (m) Briefs *amicus curiae*: Rule 345.
- (n) Inspection of original exhibits: Rule 363.
- (o) Appeal to wrong court: Rule 365.
- (p) Rehearing in reviewing courts: Rule 367.
- (q) Issuance, stay, and recall of mandates from reviewing court: Rule 368.
- (r) Process in reviewing courts: Rule 370.
- (s) Removing records from the reviewing court: Rule 372.
- (t) Constructive date of filing papers in reviewing court: Rule 373.

Amended October 21, 1969, effective January 1, 1970; amended effective January 1, 1970, and July 1, 1971; amended July 30, 1979, effective October 15, 1979; amended September 22, 1997, effective January 1, 1998; amended July 27, 2006, effective September 1, 2006.