M.R. 3140

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

Order entered December 22, 2022.

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

Effective February 1, 2023, Illinois Supreme Court Rules 23 and 361 are amended, as follows.

Amended Rule 23

Rule 23. Disposition of Cases in the Appellate Court

The decision of the Appellate Court may be expressed in one of the following forms: a full opinion, a concise written order, or a summary order conforming to the provisions of this rule. All dispositive opinions and orders shall contain the names of the judges who rendered the opinion or order.

(a) Opinions. A case may be disposed of by an opinion only when a majority of the panel deciding the case determines that at least one of the following criteria is satisfied:

(1) the decision establishes a new rule of law or modifies, explains or criticizes an existing rule of law; or

(2) the decision resolves, creates, or avoids an apparent conflict of authority within the Appellate Court.

(b) Written Order. Cases which do not qualify for disposition by opinion may be disposed of by a concise written order which shall succinctly state:

(1) in a separate introductory paragraph, a concise syllabus of the court's holding(s) in the case;

(2) the germane facts;

(3) the issues and contentions of the parties when appropriate;

(4) the reasons for the decision; and

(5) the judgment of the court.

(c) Summary Order. In any case in which the panel unanimously determines that any one or more of the following dispositive circumstances exist, the decision of the court may be made by summary order. A summary order may be utilized when:

(1) the Appellate Court lacks jurisdiction;

(2) the disposition <u>of the case, or the resolution of issues involving a criminal or juvenile sentence,</u> is clearly controlled by case law precedent, statute, or rules of court;

(3) the appeal is moot;

(4) the issues involve no more than an application of well-settled rules to recurring fact situations;

(5) the opinion or findings of fact and conclusions of law of the trial court or agency adequately explain the decision;

(6) no error of law appears on the record;

(7) the trial court or agency did not abuse its discretion; or

(8) the record does not demonstrate that the decision of the trier of fact is against the manifest weight of the evidence.

When a summary order is issued it shall contain:

(i) a statement describing the nature of the case and the dispositive issues without a discussion of the facts;

(ii) a citation to controlling precedent, if any; and

(iii) the judgment of the court and a citation to one or more of the criteria under this rule which supports the judgment, *e.g.*, "Affirmed in accordance with Supreme Court Rule 23(c)(1)."

The court may dispose of a case by summary order at any time after the case is docketed in the Appellate Court. The disposition may provide for dismissal, affirmance, remand, reversal or any combination thereof as appropriate to the case. The Appellate Court may enter a partial summary order addressing a sentencing error and may later dispose of the remaining issue or issues raised on appeal. A summary order may be entered after a dispositive issue has been fully briefed, or if the issue has been raised by motion of a party or by the court, *sua sponte*, after expiration of the time for filing a response to the motion or rule to show cause issued by the court.

(d) Captions. All opinions and orders entered under this rule shall bear a caption substantially conforming to the requirements of Rule 330. Additionally, an opinion or order entered under subpart (a) or (b) of this rule must clearly show the date of filing on its initial page.

(e) Effect of Orders.

(1) An order entered under subpart (b) or (c) of this rule is not precedential except to support contentions of double jeopardy, *res judicata*, collateral estoppel or law of the case. However, a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. When cited, a copy of the order shall be furnished to all other counsel and the court.

(2) An order entered under subpart (b) of this rule must contain on its first page a notice in substantially the following form:

> **NOTICE:** This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

(f) Motions to Publish. If an appeal is disposed of by order, any party may move to have the order published as an opinion. The motion shall set forth the reasons why the order satisfies the criteria for disposition as an opinion and shall be filed within 21 days of the entry of the order. The appellate court shall retain jurisdiction to grant or deny a timely filed motion to publish irrespective

of the filing of a petition for leave to appeal under Rule 315 and shall rule on the motion to publish within 14 days of its filing, prior to disposition by the Supreme Court of any petition for leave to appeal.

(g) Electronic Publication. In order to make available to the public all opinions and orders entered under subparts (a) and (b) of this rule, the clerks of the Appellate Court shall transmit an electronic copy of each opinion or order filed in his or her district to the webmaster of the Illinois Supreme and Appellate Courts' Web site on the day of filing. No opinion or order may be posted to the Web site that does not substantially comply with the Style Manual for the Supreme and Appellate Courts.

(h) Public-Domain Case Designators

An opinion or order entered under subpart (a) or (b) of this rule must be assigned a public-domain case designator and internal paragraph numbers, as set forth in the accompanying administrative order.

Effective January 31, 1972; amended effective July 1, 1975; amended February 19, 1982, effective April 1, 1982; amended May 18, 1988, effective August 1, 1988; amended November 21, 1988, effective January 1, 1989; amended and Commentary and Administrative Order adopted June 27, 1994, effective July 1, 1994; amended May 30, 2008, effective immediately; amended September 13, 2010, effective January 1, 2011; amended May 31, 2011, effective July 1, 2011; amended Mar. 21, 2018, eff. Apr. 1, 2018; amended Nov. 20, 2020, eff. Jan. 1, 2021; amended Dec. 22, 2022, eff. Feb. 1, 2023.

Committee Comment
(January 1, 2021)

Rule 23(e), in its prior form, mandated that case dispositions under Rule 23(b) were "not precedential and may not be cited by any party except to support contentions of double jeopardy, res judicata, collateral estoppel or law of the case." That provision of the rule was enacted in 1994. At that time, there was an "avalanche of opinions" from our appellate court (see comments of Chief Justice Bilandic), and many were simply "too long" (see comments of Justice Heiple).

In 1994, electronic legal research databases were in their relative infant stages, and the majority of legal research was done using books. Today, book-based legal research has rapidly diminished, and with it, the justifications for the prior version of Rule 23(e) have diminished. Text-searchable electronic legal research databases typically include both published opinions and Rule 23(b) orders. The amended rule makes these cases available to litigants for persuasion without expanding the body of binding precedent.

(October 4, 2011)

Under the general administrative and supervisory authority granted the Illinois Supreme Court over the courts of this state (Ill. Const. 1970, art. VI, §16), the order entered under Supreme Court Rule 23, dated May 31, 2011, is amended as follows:

(A) Assignment of Public-Domain Case Designators

The Districts of the Illinois Appellate Court shall assign a public-domain case designator to those opinions filed on or after July 1, 2011. This designator number for an opinion must be unique to that opinion and shall include the year of decision, the court abbreviation, and an identifier number comprised of the final six digits of the docket number, or the final six digits of the initial docket number in a consolidated appeal, without use of the hyphen. In the case of opinions by the Workers' Compensation Commission Division of the Appellate Court, the letters "WC" shall be added as a suffix. The public-domain identifier shall appear at top of the first page of an opinion and shall be in the following form:

[year] IL App (1st) [no.]
[year] IL App (2d) [no.]
[year] IL App (3d) [no.]
[year] IL App (4th) [no.]
[year] IL App (5th) [no.]
Workers' Compensation Commission Division
2011 IL App ([dist.]) [no.]WC

By way of example, should the First District file an opinion in cause No. 1-10-1234 in 2011, the public-domain case designator will be "2011 IL App (1st) 101234."

Where a second opinion is filed under the same docket number after remand, a capital letter "B" will be appended to the case-designator number, regardless of the year-designator portion of the citation:

2011 IL App (1st) 101159
2012 IL App (1st) 101159-B

Any further opinions arising from the same appeal shall be assigned an alphabetic letter consecutive to the preceding opinion.

However, where an opinion is withdrawn while jurisdiction has been retained by the issuing court, the new opinion or order in the matter shall be given the same case-designator number as the withdrawn opinion without the addition of a sequential alphabetic designator.

Orders filed under Illinois Supreme Court Rule 23(b) shall have the letter "U," preceded by a hyphen, appended to the case-designator number:

2011 IL App (5th) 101160-U

A subsequently filed unpublished order in the same cause of action will result in use of both a "U" and an alphabetic designator:

2011 IL App (5th) 101160-UB

Use of the "U" designator for unpublished decisions and use of an alphabetic designator ("B," "C," *etc.*) for a subsequent opinion or order are independent elements of the case-designator number:

2011 IL App (5th) 101160-U [unpublished; initial decision]

2011 IL App (5th) 101160-B [published; decision after remand]

2011 IL App (5th) 101160-UC [unpublished; decision after second remand]

Should an unpublished order under Supreme Court Rule 23 be converted to a published opinion, the "U" designation shall be deleted.

(B) Internal Paragraphing of Opinions

Illinois reviewing court opinions shall include internally numbered paragraphs as directed below. Use of internal paragraph numbers allows a pinpoint citation to the appropriate portions of an opinion when cited for a specific proposition. Such a citation will include the case name, the public-domain designator number, and the specific, or pinpoint, paragraph or paragraph numbers within the opinion:

People v. Doe, 2011 IL App (1st) 101157, ¶ 15

People v. Doe, 2011 IL App (1st) 101157, ¶¶ 21-23

People v. Doe, 2011 IL App (1st) 101157, ¶¶ 57, 68

Except for the materials denoted in paragraph below, each paragraph of text is to be numbered consecutively beginning after the heading "OPINION" or "ORDER" (including the lead-in line to a separate opinion and any joiner lines thereto).

(2) The numbering of paragraphs within a separate opinion shall be consecutive to the final paragraph number of the opinion that precedes it, beginning with the lead-in line to the separate opinion, as shown in the example below:

¶ 43 CONCLUSION
¶ 44 For the reason stated, the judgment of the circuit court is reversed and the cause is remanded to that court for further proceedings.

¶ 45 Judgment reversed;
¶ 46 cause remanded.

¶ 47 JUSTICE DOE, dissenting:
¶ 48 Because I believe the circuit court correctly resolved the issues presented in the motion to suppress, I would affirm.

The following portions of an opinion do not constitute new paragraphs and shall not be numbered:

(a) indented (blocked) text, regardless of the nature material (*e.g.*, quotation, listing of

issues, *etc.*) or the length of the material;

(b) text immediately following indented text, unless such text begins a new paragraph;

(c) text within footnotes;

(d) appendices or other attachments.

If quoted text, including indented quotations, is derived from a source that uses numbered paragraphs under a public-domain system of citation, the numbers from the original source shall not be shown in the quoted material but in the citation only.

If a supplemental document is filed, the paragraph numbering in the original document shall be continued into the supplemental document, including any lead-in lines and document headings (*e.g.*, "Supplemental Opinion"; "Dissent Upon Denial of Rehearing").

Each paragraph number shall be shown using the paragraph symbol, followed by a space, and then the number (*e.g.*, ¶ 1). The paragraph number is placed at the left margin, followed by a tab that indents the paragraphed text, as follows:

> ¶ 23 The appellate court found that *Grant* supported its conclusion that the designation of the NAF in the agreement to arbitrate was integral to the agreement. Specifically, citing *Grant*, the court noted:
>
> > "[The NAF] has a very specific set of rules and procedures that has implications for every aspect of the arbitration process."
>
> Thus the court found that section 5 of the Arbitration Act could not be used to reform the arbitration provision.
>
> ¶ 24 The defendant argues that the appellate court erroneously determined there is a split in federal case law as to the proper application of section 5 of the Act.

M.R. 10343
IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS

Order entered December 18, 2006.

***In re* Administrative Order No. M.R. 10343**

On the court's own motion, effective January 1, 2007, the administrative order entered in M.R. No. 10343, on June 27, 1994, is hereby vacated.

Order entered by the Court.

Commentary
(June 27, 1994)

By this amendment, Rule 23 creates a presumption against disposing of Appellate Court cases by full, published opinions and authorizes a third type of disposition by summary order in select circumstances. The concept of the traditional "Rule 23 order" remains, but conciseness is encouraged. Disposition by order rather than by opinion reflects the precedential value of a case, not necessarily its merits.

Two of the criteria upon which a case could qualify for disposition by opinion and the preference for publishing cases which include concurring and/or dissenting opinions have been eliminated consistent with the presumption against publication.

Amended Rule 361

Rule 361. Motions in Reviewing Court

(a) Content of Motions; Supporting Record; Other Supporting Documents. 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 or verification by certification pursuant to section 1-109 of the Code of Civil Procedure. Any affidavit shall be sworn to before a person who has authority under the law to administer oaths. 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 expired.

(b) Filing; Proposed Order; Responses. The motion shall be served, presented, and filed as follows:

(1) The motion, together with proof of service, shall be filed with the clerk. See Rule 11 regarding manner of serving documents and Rule 12 regarding proof of service. Service and filing will be excused only in case of necessity.

(2) A proposed order phrased in the alternative (*e.g.*, "Allowed" or "Denied") shall be submitted with each motion and shall be served upon all counsel of record. No motion shall be accepted by the clerk unless accompanied by such a proposed order.

(3) Responses to a motion shall be in writing and be filed, with proof of service, within 7 ~~5~~ days after personal or e-mail 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.

(c) Additional Requirement in Supreme Court.

(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. The clerk shall direct the motion to the justice of the judicial district involved or, in Cook County, to the justice designated to hear motions. The response to a motion shall also be directed to the justice within the time provided in paragraph (b)(3).

(2) If the motion seeks relief that under these rules requires action by the full court, the movant shall file the motion in accordance with paragraph (b)(1). Responses to a motion shall be filed with the clerk within the time provided in paragraph (b)(3) or, if applicable, within the time provided in Rule 381 or 383.

(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 filed on or before the due date of the document the party is seeking an extension of time to file and 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.

Amended September 29, 1978, effective November 1, 1978; amended July 30, 1979, effective October 15, 1979; amended January 5, 1981, effective February 1, 1981; 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 August 30, 1983, effective October 1, 1983; amended February 27, 1987, effective April 1, 1987; amended December 17, 1993, effective February 1, 1994; amended October 1, 1998, effective immediately; amended May 25, 2001, effective immediately; amended October 14, 2005, effective January 1, 2006; amended May 24, 2006, effective September 1, 2006; amended December 29, 2009, effective immediately; amended March 14, 2014, effective immediately; amended Dec 11, 2014, eff. Jan. 1, 2015; amended June 22, 2017, eff. July 1, 2017; amended Nov. 19, 2021, eff. Dec. 1, 2021; amended Dec. 22, 2022, eff. Feb. 1, 2023.

Committee Comments
(January 1, 2006)

Paragraph (h) was added effective January 1, 2006, to address the concerns of the bench and bar with respect to dispositive motions in the Appellate Court. Where a straightforward dispositive issue exists, such as an easily determinable lack of appellate jurisdiction, taking the motion with the case delays the final resolution of the case and greatly increases the burden on all parties by forcing them unnecessarily to brief and argue the merits of the appeal. Paragraph (h) requires that dispositive motions provide the necessary context, including those portions of the record that are necessary to resolve the motion. Where such context is provided, the rule provides that the court should resolve the dispositive motion "promptly after the filing of the objection, if any."

Committee Comments
(Revised May 1982)

Rule 361 replaced former section 86.1 of the Civil Practice Act, former Supreme Court Rule 49, former Rule 3 of the First District Appellate Court, and former Rule 5 of the other districts

(earlier Uniform Appellate Court Rule 5). It applies to motions in all reviewing courts. Except for the provisions as to time, the rule made no substantial change in the preexisting practice. The argument in support of a motion, if not set forth in the motion itself, is to be submitted in a memorandum in support of the motion, rather than in a document entitled "suggestions." The time provisions are designed to insure that the other parties have an opportunity to file objections. The number of copies of documents conforms to former requirements in the Supreme Court and all Appellate Court districts except the First District, which required an original and two copies. The additional copy gives the clerk one for his file. Paragraph (f) was new.

Paragraph (g) was added in 1978, extending to civil cases a requirement formerly appearing in Rule 610(3) (58 Ill. 2d R. 610(3)), applicable only to criminal appeals.

Two clarifying changes were made in 1979. The first sentence of paragraph (a) was added to make it explicit that, unless otherwise provided for, all applications for relief are to be made by motion, and the provisions of former Rule 328, abrogated in 1979, were in substance transferred to paragraph (a) of this rule, where they appear as the third sentence. The "short record" under the former practice is called a "supporting record" in recognition of the fact that such a record serves the sole purpose of supporting the motion and not as a basis for docketing an appeal as the "short record" was under Rule 327 before its amendment in 1979.

In 1981, paragraph (c) was amended to require that copies of motions directed to a justice when the court is not in session must be sent to the other justices at their district chambers whenever the motion seeks relief that will require action by the full court. In 1982, it was amended to clarify this requirement.

Commentary
(December 17, 1993)

The rule has been reorganized and nonsubstantive additions are made. Reference to the former motion call practice of the Supreme Court in the First District has been deleted.