

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 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 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.

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.