

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

Order entered March 15, 2024.

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

Effective April 15, 2024, Illinois Supreme Court Rules 361, 604, 605, 606, and 613 are amended, as follows.

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 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

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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.

(6) Dispositive motions shall not be allowed in appeals under Rule 604(h) unless they are represented to the court as unopposed. Such dispositive issues may be raised in the parties' memoranda.

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; amended Mar. 15, 2024; eff. Apr. 15, 2024.

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.

Amended Rule 604

Rule 604. Appeals from Certain Judgments and Orders

(a) Appeals by the State.

(1) *When State May Appeal.* In criminal cases the State may appeal only from an order or judgment the substantive effect of which results in dismissing a charge for any of the grounds enumerated in section 114-1 of the Code of Criminal Procedure of 1963; arresting judgment because of a defective indictment, information or complaint; quashing an arrest or search warrant; suppressing evidence; from an order imposing conditions of pretrial release; from an order denying a petition to deny pretrial release; or from an order denying a petition to revoke pretrial release.

(2) *Leave to Appeal by State.* The State may petition for leave to appeal under Rule 315(a).

(3) *Release of Defendant Pending Appeal.* A defendant shall not be held in jail or to bail during the pendency of an appeal by the State, or of a petition or appeal by the State under Rule 315(a), unless there are compelling reasons for his or her continued detention or being held to bail.

(4) *Time Appeal Pending Not Counted.* The time during which an appeal by the State is pending is not counted for the purpose of determining whether an accused is entitled to discharge under section 103-5 of the Code of Criminal Procedure of 1963.

(b) Appeals When Defendant Placed Under Supervision or Sentenced to Probation, Conditional Discharge or Periodic Imprisonment. A defendant who has been placed under supervision or found guilty and sentenced to probation or conditional discharge (see 730 ILCS 5/5-6-1 through 5-6-4), or to periodic imprisonment (see 730 ILCS 5/5-7-1 through 5-7-8), may appeal from the judgment and may seek review of the conditions of supervision, or of the finding of guilt or the conditions of the sentence, or both. He or she may also appeal from an order modifying the conditions of or revoking such an order or sentence.

(c) Appeals by Defendant Before Conviction From Bail Orders Entered Until the Effective Date of Public Act 101-652.

(1) *Appealability of Order With Respect to Bail.* Before conviction a defendant may appeal to the Appellate Court from an order setting, modifying, revoking, denying, or refusing to modify bail or the conditions thereof. As a prerequisite to appeal the defendant shall first present to the trial court a written motion for the relief to be sought on appeal. The motion shall be verified by the defendant and shall state the following:

- (i) the defendant's financial condition;
- (ii) his or her residence addresses and employment history for the past 10 years;
- (iii) his or her occupation and the name and address of his or her employer, if he or she is employed, or his or her school, if he or she is in school;
- (iv) his or her family situation; and
- (v) any prior criminal record and any other relevant facts.

If the order is entered upon motion of the prosecution, the defendant's verified answer to the motion shall contain the foregoing information.

(2) *Procedure.* The appeal may be taken at any time before conviction by filing a verified motion for review in the Appellate Court. The motion for review shall be accompanied by a verified copy of the motion or answer filed in the trial court and shall state the following:

- (i) the court that entered the order;
- (ii) the date of the order;
- (iii) the crime or crimes charged;
- (iv) the amount and condition of bail;
- (v) the arguments supporting the motion; and
- (vi) the relief sought.

No brief shall be filed. The motion shall be served upon the opposing party. The State may promptly file an answer.

(3) *Disposition*. Upon receipt of the motion, the clerk shall immediately notify the opposing party by telephone of the filing of the motion, entering the date and time of the notification on the docket, and promptly thereafter present the motion to the court.

(4) *Report of Proceedings*. The court, on its own motion or on the motion of any party, may order court reporting personnel as defined in Rule 46 to file in the Appellate Court a report of all proceedings had in the trial court on the question of bail.

(5) *No Oral Argument*. No oral argument shall be permitted except when ordered on the court's own motion.

(d) Appeal by Defendant From a Judgment Entered Upon a Plea of Guilty. No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment.

No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment. For purposes of this rule, a negotiated plea of guilty is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending.

The motion shall be in writing and shall state the grounds therefor. When the motion is based on facts that do not appear of record it shall be supported by affidavit unless the defendant is filing the motion *pro se* from a correctional institution, in which case the defendant may submit, in lieu of an affidavit, a certification as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109). The motion shall be presented promptly to the trial judge by whom the defendant was sentenced, and if that judge is then not sitting in the court in which the judgment was entered, then to the chief judge of the circuit, or to such other judge as the chief judge shall designate. The trial court shall then determine whether the defendant is represented by counsel, and if the defendant is indigent and desires counsel, the trial court shall appoint counsel.

If the defendant is indigent, the trial court shall order a copy of the transcript as provided in Rule 402(e) be furnished the defendant without cost. The defendant's attorney shall file with the trial court a certificate stating that the attorney has consulted with the defendant either by phone, mail, electronic means or in person to ascertain defendant's contentions of error in the sentence and the entry of the plea of guilty, has examined the trial court file and both the report of proceedings of the plea of guilty and the report of proceedings in the sentencing hearing, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings.

The motion shall be heard promptly, and if allowed, the trial court shall modify the sentence or vacate the judgment and permit the defendant to withdraw the plea of guilty and plead anew. If the motion is denied, a notice of appeal from the judgment and sentence shall be filed within the time allowed in Rule 606, measured from the date of entry of the order denying the motion. Upon

appeal any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived.

The certificate of counsel shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article VI Forms Appendix.

(e) Appeal From an Order Finding Defendant Unfit to Stand Trial or Be Sentenced. The defendant or the State may appeal to the Appellate Court from an order holding the defendant unfit to stand trial or be sentenced.

(f) Appeal by Defendant on Grounds of Former Jeopardy. The defendant may appeal to the Appellate Court the denial of a motion to dismiss a criminal proceeding on grounds of former jeopardy.

(g) Appeal From an Order Granting a Motion to Disqualify Defense Counsel. The defendant may petition for leave to appeal to the Appellate Court from an order of the circuit court granting a motion to disqualify the attorney for the defendant based on a conflict of interest. The procedure for bringing interlocutory appeals pursuant to this subpart shall be the same as set forth in Supreme Court Rule 306(c).

(h) Appeals From Orders Imposing Conditions of Pretrial Release, Granting or Denying a Petition to Deny Pretrial Release, or Revoking or Refusing to Revoke Pretrial Release.

(1) *Orders Appealable.* An appeal may be taken to the Appellate Court from an interlocutory order of court entered under sections 110-5, 110-6, and 110-6.1 of the Code of Criminal Procedure of 1963 as follows:

(i) by the State and by the defendant from an order imposing conditions of pretrial release;

(ii) by the defendant from an order revoking pretrial release or by the State from an order denying a petition to revoke pretrial release;

(iii) by the defendant from an order denying pretrial release; or

(iv) by the State from an order denying a petition to deny pretrial release.

(2) *Motion for Relief.* As a prerequisite to appeal, the party taking the appeal shall first present to the trial court a written motion requesting the same relief to be sought on appeal and the grounds for such relief. The trial court shall promptly hear and decide the motion for relief. Upon appeal, any issue not raised in the motion for relief, other than errors occurring for the first time at the hearing on the motion for relief, shall be deemed waived.

(3) *Notice of Appeal; Time; Docketing Statement; Fee.* After disposition of its motion for relief in the trial court, a party may initiate an appeal by filing a notice of appeal in the circuit court at any time prior to conviction. No docketing statement is required. *Legal Memoranda; Service; Record; Fee.* Review shall be by Notice of Appeal filed in the circuit court within 14 days of the entry or denial of the order from which review is being sought. The Notice of Appeal shall describe the relief requested and the grounds for the relief requested. A docketing statement is not required to be filed by the appellant. The appellant may file, but is not required to file, a memorandum not exceeding 4500 words, within 21 days of filing of the Rule 328 supporting record. The response to the Notice of Appeal or appellant's memorandum may include a memorandum not to exceed 4500 words. The response shall be filed within 21 days

~~of the time for filing the appellant's memorandum. The Notice of Appeal and any accompanying memoranda and response shall be filed in the Appellate Court, with proof of personal or e-mail service as provided in Rule 11. Replies and extensions of time will be allowed only by order of court for good cause shown. Within 30 days of the filing of the Notice of Appeal, the clerk of the circuit court shall also file:~~

~~—(i) A Rule 328 supporting record, which shall include the Notice of Appeal, the order appealed from, and supporting documents or matters of record necessary to the appeal. The supporting record must be authenticated by the certificate of the clerk of the circuit court.~~

~~If the defendant is represented by court-appointed counsel, the clerk of the reviewing court shall docket the appeal and accept documents for filing without the payment of the appellate court filing fees. Any supplemental supporting record filed by the appellee must accompany the response and be authenticated according to Rule 328. Motions for extension of time are disfavored and will only be granted by order of court for good cause shown.~~

~~(3)(4) *Report of Proceedings*. The court Court reporting personnel, as defined in Rule 46, shall certify and file a report of all proceedings on the questions of the conditions of pretrial release, pretrial release or of hearings concerning pretrial detention or release held, or revocation of pretrial release had in the circuit court with the clerk of the circuit court within 21 days of the filing of the notice of appeal. Notice of Appeal. When the proceedings were recorded by means of audiovisual communication or other electronic recording system that includes audio only, The report of proceedings should not extend to proceedings not bearing on detention or release on conditions. If a transcript can be timely prepared, the court reporting personnel shall certify and file a transcript as the report of proceedings for purposes of the appeal. If a transcript cannot be timely prepared and if the proceedings were recorded by means of an electronic recording system, the court reporting personnel may certify the recording as the report of proceedings for purposes of the appeal and file the recording with a detailed table of contents as required by the Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal. Upon written request from the defendant or defendant's counsel, If a court reporter transcribes the proceedings, nothing prohibits the transcriptions from also being filed with the clerk of the circuit court shall transmit a printed copy of any transcript filed by the court reporting personnel and a copy transmitted to a defendant whom the circuit court has found finds indigent. The clerk of the circuit court shall file the report of proceedings with the clerk of the reviewing court within 30 days of the filing of the Notice of Appeal.~~

~~—(4) The clerk of the circuit court shall provide only one free printed copy of the transcript without cost report of proceedings to the indigent defendant.~~

~~—(5) *Time for Decision; Oral Argument*. After the appellant has filed the Notice of Appeal, supporting record, and any memorandum and the time for filing any response and memorandum has expired, the Appellate Court shall consider and decide the appeal within 14 days, except the court may extend the deadline for good cause.~~

~~(5) *Record*. Within 30 days of the filing of the notice of appeal, the clerk of the circuit court shall file the record on appeal as required by Rule 324. Motions for extension of time to file the record on appeal are disfavored and will be granted only for good cause shown.~~

(6) Supplement to the Record on Appeal. Supplementation of the record, including by stipulation, shall be according to Rule 329.

(7) Memoranda. The motion for relief will serve as the argument of the appellant on appeal. The appellant may file, but is not required to file, a memorandum not exceeding 4500 words, within 21 days of the filing of the record on appeal. Issues raised in the motion for relief are before the appellate court regardless of whether the optional memorandum is filed. If a memorandum is filed, it must identify which issues from the motion for relief are being advanced on appeal. Whether made in the motion for relief alone or as supplemented by the memorandum, the form of the appellant's arguments must contain sufficient detail to enable meaningful appellate review, including the contentions of the appellant and the reasons therefore and citations of the record and any relevant authorities. The appellee may file a memorandum not to exceed 4500 words in response to the motion for relief or appellant's memorandum. The response shall be filed within 21 days of the time for filing the appellant's memorandum. Each memorandum shall be clearly titled on the cover page as Appellant's Memorandum or Appellee's Memorandum in bold type. The memoranda shall be filed in the appellate court with proof of personal or e-mail service as provided in Rule 11. Replies and requests for extension of time consistent with Rule 361(f) will be allowed only by order of court for good cause shown.

(8) Oral Argument; Deadline for Disposition. Oral argument will not be heard, except on the court's motion. Except for good cause shown, the time from the filing of the notice of appeal until disposition shall not exceed 100 days.

(9)(6) Jurisdiction of the Circuit Court. The circuit court shall retain jurisdiction to proceed with the case during the pendency of any appeal from an order entered pursuant to sections 110-5, 110-6, and 110-6.1 of the Code of Criminal Procedure of 1963.

(10) Notification of Mootness. If the issues raised on appeal become moot due to resolution of the case or otherwise, trial counsel for the party initiating the appeal must advise the clerk of the relevant appellate district of the basis for mootness via e-mail within 24 hours, with a copy of the e-mail sent to all trial and appellate counsel of record and self-represented parties. Unless the appellant's e-mail communication expressly makes a request to dismiss the appeal, it shall be followed by a motion to voluntarily dismiss.

(11) Appeals From Subsequent Orders. No appeal from a subsequent detention or release order may be taken while a prior appeal under this rule by the same party remains pending in the appellate court.

Amended effective July 1, 1969; amended October 21, 1969, effective January 1, 1970; amended effective October 1, 1970, July 1, 1971, November 30, 1972, September 1, 1974, and July 1, 1975; amended February 19, 1982, effective April 1, 1982; amended June 15, 1982, effective July 1, 1982; amended August 9, 1983, effective October 1, 1983; amended April 1, 1992, effective August 1, 1992; amended October 5, 2000, effective November 1, 2000; amended February 1, 2005, effective immediately; amended December 13, 2005, effective immediately; amended February 10, 2006, effective July 1, 2006; amended Nov. 28, 2012, eff. Jan. 1, 2013; amended Feb. 6, 2013, eff. immediately; amended Dec. 11, 2014, eff. immediately; amended Dec. 3, 2015, eff. immediately; amended March 8, 2016, eff. immediately; amended June 22, 2017, eff. July 1, 2017; amended Dec.

23, 2022, eff. Sept. 18, 2023; amended Oct. 19, 2023, eff. immediately; amended Dec. 7, 2023, eff. immediately; amended Mar. 15, 2024; eff. Apr. 15, 2024.

Committee Comment
(February 10, 2006)

Paragraph (g)

Paragraph (g) permits interlocutory review of certain attorney disqualification orders but does not change attorney disqualification law. The circuit court still has discretion to accept or reject a defendant's conflict of interest waiver, based on consideration of the interests identified in *People v. Ortega*, 209 Ill. 2d 354 (2004).

Committee Comments
(February 1, 2005)

The language in paragraph (a) allowing interlocutory appeals from orders decertifying a prosecution as a capital case or finding the defendant to be mentally retarded provides for the kinds of appeals contemplated by section 9–1(h-5) of the Criminal Code of 1961 (720 ILCS 5/9–1(h-5)) and section 114–15(f) of the Code of Criminal Procedure of 1963 (725 ILCS 5/114–15(f)).

Committee Comments
(Revised July 1, 1975)

Rule 604 was amended in September 1969 to add paragraph (b), dealing with appeals when probation has been granted. The 1969 amendment made what was formerly the entirety of Rule 604 into paragraph (a) and made an appropriate change in the title of the rule.

Paragraph (a)

Subparagraph (1) of paragraph (a) is former Rule 27(4), as it existed until January 1, 1967, with slight changes in language. (Rule 27(4) was derived from sections 121-1 and 120-2 of the Code.) The rule makes it clear that an order dismissing an indictment, information or complaint for any of the grounds enumerated in section 114-1 of the Code is appealable.

Subparagraph (2) was added by amendment effective November 30, 1972.

Subparagraph (3) is former section 120-3(a) of the Code without change.

Subparagraph (4) is section 120-3(b) of the Code without change.

Paragraph (b)

Paragraph (b) is based upon sections 117-1(d) and 117-3(e) of the Code and is included in the rule in conformity with the policy of covering all appeals in the supreme court rules, as contemplated by the judicial article of the Constitution. (Ill. Const., art. VI, §16.) Paragraph (b) was amended in 1974 to cover conditional discharge and periodic imprisonment, new forms of sentence created by the adoption in Illinois of the Unified Code of Corrections.

Paragraph (c)

Paragraph (c) was added in 1971 to establish a procedure for appeals from orders in criminal cases concerning bail. Prior to its adoption, the only avenue of relief was an original petition to the Supreme Court for a writ of *habeas corpus*. Subparagraph (c)(2) was amended in 1974 to provide that the State may file an answer.

Paragraph (d)

Paragraph (d), added in 1975, provides that before a defendant may file a notice of appeal from a judgment entered on his plea of guilty, he must move in the trial court to vacate the judgment and withdraw his plea. Issues not raised in such a motion are waived. The time within which an appeal may be taken runs from the date on which the order disposing of the motion is entered. Provision is made for appointment of counsel and provision of a free transcript of the proceedings, which, under Rule 402(e), are required to be transcribed, filed, and made a part of the common law record.

Amended Rule 605

Rule 605. Advice to Defendant

(a) On Judgment and Sentence After Plea of Not Guilty.

(1) In all cases in which the defendant is found guilty and sentenced to imprisonment, probation or conditional discharge, periodic imprisonment, or to pay a fine, or in which a sentence of probation or conditional discharge has been revoked or the conditions attached to such a sentence have been modified, excluding cases in which the judgment and sentence are entered on a plea of guilty, the trial court shall, at the time of imposing sentence or modifying the conditions of the sentence, advise the defendant of the right to appeal, of the right to request the clerk to prepare and file a notice of appeal, and of the right, if indigent, to be furnished, without cost to the defendant, with a transcript of the proceedings at the trial or hearing.

(2) In addition to the foregoing rights, in cases in which the defendant has been convicted of a felony or a Class A misdemeanor or convicted of a lesser offense and sentenced to imprisonment, periodic imprisonment, or to probation or conditional discharge conditioned upon periodic imprisonment, or in which a sentence of probation or conditional discharge has been revoked or the conditions attached to such a sentence have been modified and a sentence or condition of imprisonment or periodic imprisonment imposed, the trial court shall advise the defendant of the right to have counsel appointed on appeal.

(3) At the time of imposing sentence or modifying the conditions of the sentence, the trial court shall also advise the defendant as follows:

A. that the right to appeal the judgment of conviction, excluding the sentence imposed or modified, will be preserved only if a notice of appeal is filed in the trial court within thirty (30) days from the date on which sentence is imposed;

B. that prior to taking an appeal, if the defendant seeks to challenge the correctness of the sentence, or any aspect of the sentencing hearing, the defendant must file in the trial court within 30 days of the date on which sentence is imposed a written motion asking to have the trial court reconsider the sentence imposed, or consider any challenges to the sentencing hearing, setting forth in the motion all issues or claims of error regarding the sentence imposed or the sentencing hearing;

C. that any issue or claim of error regarding the sentence imposed or any aspect of the sentencing hearing not raised in the written motion shall be deemed waived; and

D. that in order to preserve the right to appeal following the disposition of the motion to reconsider sentence, or any challenges regarding the sentencing hearing, the defendant must file a notice of appeal in the trial court within 30 days from the entry of the order disposing of the defendant's motion to reconsider sentence or order disposing of any challenges to the sentencing hearing.

(b) On Judgment and Sentence Entered on a Plea of Guilty. In all cases in which a judgment is entered upon a plea of guilty, other than a negotiated plea of guilty, at the time of imposing sentence, the trial court shall advise the defendant substantially as follows:

(1) that the defendant has a right to appeal;

(2) that prior to taking an appeal the defendant must file in the trial court, within 30 days of the date on which sentence is imposed, a written motion asking to have the trial court reconsider the sentence or to have the judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion;

(3) that if the motion is allowed, the sentence will be modified or the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made;

(4) that upon the request of the State any charges that may have been dismissed as a part of a plea agreement will be reinstated and will also be set for trial;

(5) that if the defendant is indigent, a copy of the transcript of the proceedings at the time of the defendant's plea of guilty and sentence will be provided without cost to the defendant and counsel will be appointed to assist the defendant with the preparation of the motions; and

(6) that in any appeal taken from the judgment on the plea of guilty any issue or claim of error not raised in the motion to reconsider the sentence or to vacate the judgment and to withdraw the plea of guilty shall be deemed waived.

For the purposes of this rule, a negotiated plea is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending.

(c) On Judgment and Sentence Entered on a Negotiated Plea of Guilty. In all cases in which a judgment is entered upon a negotiated plea of guilty, at the time of imposing sentence, the trial court shall advise the defendant substantially as follows:

(1) that the defendant has a right to appeal;

(2) that prior to taking an appeal the defendant must file in the trial court, within 30 days

of the date on which sentence is imposed, a written motion asking to have the judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion;

(3) that if the motion is allowed, the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made;

(4) that upon the request of the State any charges that may have been dismissed as a part of a plea agreement will be reinstated and will also be set for trial;

(5) that if the defendant is indigent, a copy of the transcript of the proceedings at the time of the defendant's plea of guilty and sentence will be provided without cost to the defendant and counsel will be appointed to assist the defendant with the preparation of the motions; and

(6) that in any appeal taken from the judgment on the plea of guilty any issue or claim of error not raised in the motion to vacate the judgment and to withdraw the plea of guilty shall be deemed waived.

For the purposes of this rule, a negotiated plea is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending.

(d) On Entry of an Order Imposing Conditions of Pretrial Release, Granting a Petition to Deny Pretrial Release, or Revoking Pretrial Release. In all cases in which an order is issued imposing conditions of pretrial release, granting the State's petition to deny pretrial release, or revoking a defendant's pretrial release under article 110 of the Code of Criminal Procedure of 1963;

(1) at the time of issuing the order, the circuit court shall advise the defendant substantially as follows: that defendant has a right to file a motion for relief from the court's order and also that the court will revisit the order of detention or the condition of pretrial release at each subsequent court appearance, regardless of whether a motion for relief is filed; and

(2) at the time of its ruling on the defendant's motion for relief under Rule 604(h)(2), the circuit court shall advise the defendant substantially as follows:

(A)(1) that the defendant has a right to appeal at any time before conviction and, if indigent, to be furnished, without cost to the defendant, with a transcript or audiovisual communication or other electronic recording of the proceedings of the hearing;

(B)(2) that the defendant, if indigent, has the right to have counsel appointed on appeal;
and

~~—(3) that the right to appeal the order will be preserved only if a Notice of Appeal under Rule 604(h) is filed in the circuit court within 14 days from the date on which the order is entered.~~

Amended June 22, 1967, effective June 23, 1967; amended June 26, 1970, effective September 1, 1970; amended effective July 1, 1971, September 1, 1974, and July 1, 1975; amended April 1, 1992, effective August 1, 1992; amended October 5, 2000, effective November 1, 2000; amended October 1, 2001, effective immediately; amended Dec. 23, 2022, eff. Sept. 18, 2023; amended Dec. 7, 2023, eff. immediately; amended Mar. 15, 2024, eff. Apr. 15, 2024.

Committee Comments

(Revised July 1, 1975)

This rule is derived from former Rule 27(6), as it existed before 1967, which in turn was derived from section 121-4(c) of the Code of Criminal Procedure. In 1967 the requirement that the stenographic transcript of the court's advice to the defendant and the defendant's answers be filed as a part of the common-law record was transferred to Rule 401, and the last sentence of the former rule was transferred to Rule 606(a).

This rule was amended in June, 1970, to add the last sentence, which requires the trial court to advise the defendant of the time within which his notice of appeal must be filed in order to preserve his right to appeal. See Rule 651(b) for a comparable provision.

The 1971 amendments remove the requirement that the court advise of their various rights defendants who plead guilty. They also extended the requirement that the advice be given in all cases, including misdemeanor cases, in which the defendant was convicted of an offense punishable by imprisonment for more than six months. In thus extending the requirement these amendments conformed the rule to the provisions of Rule 607, as amended the same year, dealing with the rights of indigents to appointed counsel and a report of proceedings. (See Committee Comments to that rule.) In 1974, Rule 607 was again amended to provide for a free transcript in all cases in which the defendant has been convicted and sentenced. Under the amended rule, however, the right to appointment of counsel is limited to cases in which the offense was a felony or a Class A misdemeanor, or in which the sentence involves some imprisonment, whether imposed as a sentence or as a condition to a sentence of probation or conditional discharge. This rule was again amended to conform its provisions with those of Rule 607. The language of both rules was changed to conform with the language of the Unified Code of Corrections.

In 1975, Rule 604(d) was added to provide that before appealing a judgment and sentence entered on a plea of guilty, the defendant must move in the trial court for vacation of the judgment and to withdraw the plea of guilty. Rule 605 was amended to designate the matter then contained in the rule as paragraph (a), and to add new paragraph (b), providing that on imposition of sentence the defendant shall be advised of the requirements of Rule 604(d).

Amended Rule 606

Rule 606. Perfection of Appeal.

(a) How Perfected. 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. Except as provided in Rule 604(h), if the defendant requests in open court at the time he or she is advised of the right to appeal or later 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) and 604(h), 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. A notice of appeal filed after the court announces a decision, but before the entry of the judgment or order, is treated as filed on the date of and after the entry of the judgment order.

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. Except as provided in Rule 604(h), 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. However, when the appellant is filing the motion *pro se* from a correctional institution, the appellant may submit, in lieu of the affidavit referred to herein, a certification as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109).

(d) Forms of Notice of Appeal. The notices of appeal under article 110 of the Code of Criminal Procedure of 1963 when the defendant is the appellant or the State is the appellant shall be prepared by using, or substantially adopting the appearance and content of, the forms provided in the Article VI Forms Appendix. In all other cases, the notice of appeal shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article VI Forms Appendix. Except as provided in Rule 604(h), the notice of appeal may be amended as provided in Rule 303(b)(5).

(e) 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 the notice of appeal to the State's Attorney of the county in which the judgment was entered.

(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 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, the notice of appeal shall be sent to the defendant and to his counsel.

(f) Docketing. Upon receipt 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, except as provided in Rule 604(h), 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 filing fee as required by Rule 313. The docketing statement shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article VI Forms Appendix.

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 March 20, 2009, effective immediately; amended Dec. 12, 2012, eff. Jan. 1, 2013; amended Feb. 6, 2013, eff. immediately; amended Dec. 11, 2014, eff. immediately; amended June 22, 2017, eff. July 1, 2017; amended Mar. 12, 2021, eff. immediately; amended Dec. 23, 2022, eff. Sept. 18, 2023; amended Oct. 19, 2023, eff. immediately; amended Dec. 7, 2023, eff. immediately; amended Mar. 15, 2024, eff. Apr. 15, 2024.

Amended Rule 613

Rule 613. Mandate of Reviewing Court

(a) In all cases the reviewing court shall direct the appellate or trial court to proceed in accordance with the mandate.

(b) Reversal When Appellant Is Serving Sentence. If in a case on appeal the appellant is serving the sentence imposed in the trial court and the judgment is reversed and appellant ordered discharged, the clerk of the reviewing court shall at once mail to the imprisoning officer, certified mail, return receipt requested, a copy of the mandate of the reviewing court. It shall be the duty of the imprisoning officer to release appellant from custody forthwith upon receiving a certified copy of the mandate of the reviewing court. If appellant is serving the sentence and the judgment is reversed and the cause remanded to the trial court for further proceedings, the clerk of the reviewing court shall at once mail to the imprisoning officer, certified mail, return receipt requested, a copy of the mandate of the reviewing court. The imprisoning officer shall forthwith, upon receiving the certified copy of the mandate of the reviewing court, return appellant to the trial court to which the cause was remanded.

(c) Credit for Time Served Pending Appeal. In any case in which, pending appeal, an appellant serves any portion of the sentence imposed in the trial court and the judgment of the trial court is reversed by a reviewing court and a new trial ordered, the appellant shall be given credit in any subsequent sentence for the time served pending appeal.

(d) Mandates in Rule 604(h) Appeals. In appeals under Rule 604(h), the clerk of the reviewing court shall transmit the mandate of the reviewing court to the circuit court five court days after the entry of judgment unless the court orders otherwise, *sua sponte* or pursuant to motion.

Amended June 26, 1987, effective August 1, 1987; amended September 22, 1997, effective immediately; amended Feb. 6, 2013, eff. immediately; amended Mar. 15, 2024, eff. Apr. 15, 2024.

Committee Comments

This is section 121-14 of the Code of Criminal Procedure of 1963, with some language changes for clarification. Although it was not part of former Rule 27, the committee recommended that it be made part of the supreme court rules in keeping with the effort to place all provisions concerning appellate practice in a single body of rules.