

M.R. 3140

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

Order entered December 29, 2009.

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

Effective immediately, Supreme Court Rules 11, 12, 361, 367, 373, 381, and 383 are amended as follows:

Amended Rule 11

Rule 11. Manner of Serving Papers Other Than Process and Complaint on Parties Not in Default in the Trial and Reviewing Courts

(a) On Whom Made. If a party is represented by an attorney of record, service shall be made upon the attorney. Otherwise service shall be made upon the party.

(b) Method. Papers shall be served as follows:

(1) by delivering them to the attorney or party personally;

(2) by leaving them in the office of the attorney with ~~his~~ the attorney's clerk, or with a person in charge of the office; or if a party is not represented by counsel, by leaving them at ~~his~~ the party's residence with a family member of the age of 13 years or upwards;

(3) by depositing them in a United States post office or post office box, enclosed in an envelope, plainly addressed to the attorney at ~~his~~ the attorney's business address, or to the party at ~~his~~ the party's business address or residence, with postage fully prepaid;

(4) by delivering them to a third-party commercial carrier—including deposit in the carrier's pick-up box or drop off with

the carrier's designated contractor—enclosed in a package, plainly addressed to the attorney at the attorney's business address, or to the party at the party's business address or residence, with the delivery charge fully prepaid; or

~~(4)~~ (5) by transmitting them via facsimile machine to the office of the attorney or party, who has consented to receiving service by facsimile transmission. Briefs filed in reviewing courts shall not be served by facsimile transmission.

(i) A party or attorney electing to serve pleadings by facsimile must include on the certificate of service transmitted the telephone number of the sender's facsimile transmitting device. Use of service by facsimile shall be deemed consent by that party or attorney to receive service by facsimile transmission. Any party may rescind consent of service by facsimile transmission in a case by filing with the court and serving a notice on all parties or their attorneys who have filed appearances that facsimile service will not be accepted. A party or attorney who has rescinded consent to service by facsimile transmission in a case may not serve another party or attorney by facsimile transmission in that case.

(ii) Each page of notices and documents transmitted by facsimile pursuant to this rule should bear the circuit court number, the title of the document, and the page number.

(c) Multiple Parties or Attorneys. In cases in which there are two or more plaintiffs or defendants who appear by different attorneys, service of all papers shall be made on the attorney for each of the parties. If one attorney appears for several parties, ~~he~~ that attorney is entitled to only one copy of any paper served upon ~~him~~ the attorney by the opposite side. When more than one attorney appears for a party, service of a copy upon one of them is sufficient.

Amended April 8, 1980, effective May 15, 1980; amended April 10, 1987, effective August 1, 1987; amended October 30, 1992, effective November 15, 1992; amended December 29, 2009, effective immediately.

Committee Comments

(December 29, 2009)

The rules on service and filing have been revised to provide for sending documents via third-party commercial carrier. Under these rules, the term “delivery” refers to all the carrier’s standard pick-up methods, such as dropping a package in a UPS or FedEx box or with a UPS or FedEx contractor.

Amended Rule 12

Rule 12. Proof of Service in the Trial and Reviewing Courts; Effective Date of Service

(a) Filing. When service of a paper is required, proof of service shall be filed with the clerk.

(b) Manner of Proof. Service is proved:

(1) by written acknowledgment signed by the person served;

(2) in case of service by personal delivery, by certificate of the attorney, or affidavit of a person, other than an attorney, who made delivery;

(3) in case of service by mail or by delivery to a third-party commercial carrier, by certificate of the attorney, or affidavit of a person other than the attorney, who deposited the paper in the mail or delivered the paper to a third-party commercial carrier, stating the time and place of mailing or delivery, the complete address which appeared on the envelope or package, and the fact that proper postage or the delivery charge was prepaid; or

(4) in case of service by facsimile transmission, by certificate of the attorney or affidavit of a person other than the attorney, who transmitted the paper via facsimile machine, stating the time and place of transmission, the telephone number to which the transmission was sent, and the number of pages transmitted.

(c) Effective Date of Service by Mail. Service by mail is complete four days after mailing.

(d) Effective Date of Service by Delivery to Third-Party Commercial Carrier. Service by delivery to a third-party commercial carrier is complete on the third business day after delivery of the package to the third-party carrier.

(d) (e) Effective Date of Service by Facsimile Transmission. Service by facsimile machine is complete on the first court day following transmission.

Amended effective July 1, 1971, and July 1, 1975; amended October 30, 1992, effective November 15, 1992; amended December 29, 2009, effective immediately.

Committee Comments

(December 29, 2009)

The rules on service and filing have been revised to provide for sending documents via third-party commercial carrier. Under these rules, the term “delivery” refers to all the carrier’s standard pick-up methods, such as dropping a package in a UPS or FedEx box or with a UPS or FedEx contractor.

Amended Rule 361

Rule 361. Motions in Reviewing Court

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

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

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

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

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

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

(c) In Supreme Court While Not in Session.

(1) If a rule provides that relief may be granted "by the court or a justice thereof," the motion shall be directed to only one justice. Such a motion shall be directed to the justice of the judicial district involved or, in Cook County, to the justice designated to hear motions. For the second, third, fourth, and fifth judicial districts, a copy of the motion shall be served on the justice at the justice's district chambers and the original shall be filed with the clerk in Springfield, together with a proof of service that identifies the justice receiving the motion and acknowledges compliance with the proposed-order requirement of paragraph (b)(3). A copy of the response to a motion shall be directed to the justice within the time provided in paragraph (b)(2), and the original shall be filed with the clerk in Springfield. For the first judicial district (Cook County), the motion and one copy, together with a proof of service and a proposed order, shall be filed with the clerk in the Chicago satellite office. The deputy clerk will direct the motion to the justice designated to hear motions. Responses to a motion shall be filed with the clerk in the Chicago satellite office within the time provided

in paragraph (b)(2).

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

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

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

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

(g) Emergency Motions and Bail Motions. Each District of the Appellate Court shall promulgate and publish rules setting forth the procedure for emergency motions, including notice requirements. Subject to the rules of each District, an emergency motion must specify the nature

of the emergency and the grounds for the specific relief requested. Except in the most extreme and compelling circumstances, a motion for an extension of time will not be considered an emergency. Motions regarding bail in criminal cases or bonds in civil and criminal cases shall be considered emergency motions if so designated by the movant.

(h) Dispositive Motions.

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

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

(3) A dispositive motion shall include:

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

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

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

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

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

(5) The Appellate Court may order additional briefing, record

submissions, or oral argument as it deems appropriate.

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 Rule 367

Rule 367. Rehearing in Reviewing Court

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

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

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

first-class mail or delivered by third-party commercial carrier to the Reporter of Decisions, P.O. Box 3456, Bloomington, Illinois 61702-3456, and a certificate of mailing or delivery shall be supplied to the clerk of the Supreme Court.

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

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

Amended October 1, 1976, effective November 15, 1976; amended February 19, 1982, effective April 1, 1982; amended April 10, 1987; amended June 12, 1987, effective August 1, 1987; amended December 17, 1993, effective February 1, 1994; amended October 14, 2005, effective January 1, 2006; amended May 24, 2006, effective September 1, 2006; amended December 29, 2009, effective immediately.

Amended Rule 373

Rule 373. Date of Filing Papers in Reviewing Court; Certificate or Affidavit of Mailing

Unless received after the due date, the time of filing records, briefs or other papers required to be filed within a specified time will be the date on which they are actually received by the clerk of the reviewing court. If received after the due date, the time of mailing, or the time of delivery to a third-party commercial carrier for delivery to the clerk within three business

days, shall be deemed the time of filing. Proof of mailing or delivery to a third-party commercial carrier shall be as provided in Rule 12(b)(3). This rule also applies to the notice of appeal filed in the trial court.

Amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended December 17, 1993, effective February 1, 1994; amended December 29, 2009, effective immediately.

Committee Comments

(December 29, 2009)

The rules on service and filing have been revised to provide for sending documents via third-party commercial carrier. Under these rules, the term “delivery” refers to all the carrier’s standard pick-up methods, such as dropping a package in a UPS or FedEx box or with a UPS or FedEx contractor.

Amended Rule 381

Rule 381. Original Actions in the Supreme Court Pursuant to Article VI, Section 4(a), of the Constitution

(a) Motion for Leave to File; Only Issues of Law Considered.

Proceedings in the supreme court in original actions in cases relating to revenue, *mandamus*, prohibition, or *habeas corpus*, and as may be necessary to the complete determination of any case on review, shall be instituted by filing a motion, supported by explanatory suggestions, for leave to file a complaint seeking appropriate relief. Only issues of law will be considered. The proposed complaint shall be sworn to and shall contain or have attached to it the lower court records or other pertinent material that will fully present the issues of law. If the motion is filed when the court is not in session and the case arises from the second, third, fourth, or fifth judicial district, the movant shall file the original and one copy with the clerk in Springfield and send a copy to each justice of the court at the justice’s district chambers. If the case arises from the first judicial district (Cook County), the movant shall file the original motion and five copies

with the clerk in the Chicago satellite office and send a copy to each justice from the second, third, fourth, and fifth districts at the justice's district chambers.

(b) Service of Process. A copy of the motion together with the proposed complaint shall be served upon the other party or parties, including the nominal party or parties, and proof of service shall be filed at the time the motion is filed.

(c) Judge a Nominal Party. In an original action to review a judge's judicial act the judge is a nominal party, only, in the proceeding, and need not respond to the motion or complaint unless instructed to do so by the court. The judge's failure to do so will not admit any allegation. Counsel for the prevailing party may file appropriate papers for that party but shall not file any paper in the name of the judge.

(d) Objections to Motion. The respondent shall have 7 days after personal or facsimile service of the motion, or 14 days after mailing of the motion if service is by mail, or 14 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 to file any objections to the motion, and service shall be made upon the movant and proof of service filed with the clerk of the court. Oral argument on the motion shall be permitted as the court may allow.

(e) Briefs. If the motion is allowed, briefs conforming to the requirements of Rules 341 through 344 shall be filed in support of the pleadings, within the time fixed by the court on motion of any party or on its own motion. On notice to the court and the other party or parties, the plaintiff or defendant may allow his or her original papers to stand as his or her brief without order of court.

Amended effective May 27, 1969, and July 1, 1971; amended January 5, 1981, effective February 1, 1981; amended February 19, 1982, effective April 1, 1982; amended February 27, 1987, effective April 1, 1987; amended December 17, 1993, effective February 1, 1994; amended March 1, 2001, effective immediately; amended December 29, 2009, effective immediately.

Amended Rule 383

Rule 383. Motions for Supervisory Orders

(a) A motion requesting the exercise of the Supreme Court's supervisory authority shall be supported by explanatory suggestions and shall contain or have attached to it the lower court records or other pertinent material that will fully present the issues, authenticated as required by Rule 328.

(b) A copy of the motion, explanatory suggestions, and all supporting papers must be served upon the other parties, including the nominal party or parties, and proof of service filed at the time the motion is filed.

(c) A person whose act is the subject of this proceeding shall be designated as a respondent. A respondent need not respond to the motion unless instructed to do so by the court, and failure to respond will not admit any of the allegations contained in the motion. The prevailing party or parties below shall file appropriate papers for that respondent but shall not file any paper in the name of the respondent.

(d) The prevailing party below shall have 7 days after personal or facsimile service of the motion, or 14 days after mailing of the motion if service is by mail, or 14 days after delivery of the motion 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 to file any objections to the motion, and service shall be made upon the movant and proof of service filed with the clerk of the court.

(e) Illegible copies of papers shall not be received. If the motion is filed when the court is not in session and the case arises from the second, third, fourth, or fifth judicial district, the movant shall file the original and one copy with the clerk in Springfield and send a copy to each justice of the court at the justice's district chambers. If the case arises from the first judicial district (Cook County), the movant shall file the original motion and five copies with the clerk in the Chicago satellite office and send a copy to each justice from the second, third, fourth, and fifth districts at the justice's district chambers.

(f) Oral argument shall be permitted only if requested by the court.

Adopted August 9, 1983, effective October 1, 1983; amended February 27, 1987, effective April 1, 1987; amended December 17, 1993, effective February 1, 1994; amended March 1, 2001, effective immediately; amended December 29, 2009, effective immediately.

