

### **Rule 306. Interlocutory Appeals by Permission**

**(a) Orders Appealable by Petition.** A party may petition for leave to appeal to the Appellate Court from the following orders of the trial court:

- (1) from an order of the circuit court granting a new trial;
- (2) from an order of the circuit court allowing or denying a motion to dismiss on the grounds of *forum non conveniens*, or from an order of the circuit court allowing or denying a motion to transfer a case to another county within this State on such grounds;
- (3) from an order of the circuit court denying a motion to dismiss on the grounds that the defendant has done nothing which would subject defendant to the jurisdiction of the Illinois courts;
- (4) from an order of the circuit court granting or denying a motion for a transfer of venue based on the assertion that the defendant is not a resident of the county in which the action was commenced, and no other legitimate basis for venue in that county has been offered by the plaintiff;
- (5) from interlocutory orders affecting the care and custody of or the allocation of parental responsibilities for unemancipated minors or the relocation (formerly known as removal) of unemancipated minors, if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules;
- (6) from an order of the circuit court which remands the proceeding for a hearing *de novo* before an administrative agency;
- (7) from an order of the circuit court granting a motion to disqualify the attorney for any party;
- (8) from an order of the circuit court denying or granting certification of a class action under section 2–802 of the Code of Civil Procedure (735 ILCS 5/2-802); or
- (9) from an order of the circuit court denying a motion to dispose under the Citizen Participation Act (735 ILCS 110/1 *et seq.*)

If the petition for leave to appeal an order granting a new trial is granted, all rulings of the trial court on the posttrial motions are before the reviewing court without the necessity of a cross-petition.

#### **(b) Procedure for Petitions Under Subparagraph (a)(5).**

(1) *Petition; Service; Record.* Unless another form is ordered by the Appellate Court, review of an order affecting the care and custody of or the allocation of parental responsibilities for an unemancipated minor or the relocation of unemancipated minors as authorized in paragraph (a)(5) shall be by petition filed in the Appellate Court. The petition shall state the relief requested and the grounds for the relief requested. An appropriate supporting record shall accompany the petition, which shall include the order appealed from or the proposed order, and any supporting documents or matters of record necessary to the petition. The supporting record must be authenticated by the certificate of the clerk of the trial court or by the affidavit of the attorney or party filing it. The petition, supporting record and the petitioner's legal memorandum, if any, shall be filed in the Appellate Court within 14 days of the entry or denial of the order from which review is being sought, with proof of personal or e-mail service as

provided in Rule 11. The petition for leave to appeal must also be served upon the trial court judge who entered the order from which leave to appeal is sought.

(2) *Legal Memoranda.* With the petition, the petitioner may file a memorandum, not exceeding 15 pages or, alternatively, 4,500 words. The respondent or any other party or person entitled to be heard in the case may file, with proof of personal or e-mail service as provided in Rule 11, a responding memorandum within five business days following service of the petition and petitioner's memorandum. A memorandum by the respondent or other party may not exceed 15 pages or, alternatively, 4,500 words.

(3) *Replies; Extensions of Time.* Except by order of court, no replies will be allowed and no extension of time will be allowed.

(4) *Variations by Order of Court.* The Appellate Court may, if it deems it appropriate, order a different schedule, or order that no memoranda be filed, or order that other materials need not be filed.

(5) *Procedure if Leave to Appeal Is Granted.* If leave to appeal is granted, the circuit court and the opposing parties shall be served with the order granting leave to appeal. All proceedings shall then be subject to the expedited procedures set forth in Rule 311(a). A party may allow his or her petition or answer to stand as his or her brief or may elect to file a new brief. In order to allow a petition or answer to stand as a brief, the party must notify the other parties and the clerk of the Appellate Court on or before the due date of the brief.

**(c) Procedure for All Other Petitions Under This Rule.**

(1) *Petition.* The petition shall contain a statement of the facts of the case, supported by reference to the supporting record, and of the grounds for the appeal. The petition shall be filed in the Appellate Court in accordance with the requirements for briefs within 30 days after the entry of the order. A supporting record conforming to the requirements of Rule 328 shall be filed with the petition.

(2) *Answer.* Any other party may file an answer within 21 days of the filing of the petition, together with a supplementary supporting record conforming to Rule 328 consisting of any additional parts of the record the party desires to have considered by the Appellate Court. No reply will be received except by leave of court or a judge thereof.

(3) *Appendix to Petition.* The petition shall include, as an appendix, the order appealed from, and any opinion, memorandum, or findings of fact entered by the trial judge, and a table of contents of the record on appeal in the form provided in Rule 342(a).

(4) *Extensions of Time.* The above time limits may be extended by the reviewing court or a judge thereof upon notice and motion, accompanied by an affidavit showing good cause, filed before expiration of the original or extended time.

(5) After the petitioner has filed the petition and supporting record and the time for filing any answer has expired, the Appellate Court, except for good cause shown, shall decide whether to allow the interlocutory appeal within 30 days.

(6) *Stay; Notice of Allowance of Petition.* If the petition is granted, the proceedings in the

trial court are stayed. Upon good cause shown, the Appellate Court or a judge thereof may vacate or modify the stay, and may require the petitioner to file an appropriate bond. Within 48 hours after the granting of the petition, the Appellate Court clerk shall notify the clerk of the circuit court.

(7) *Additional Record.* If leave to appeal is allowed, any party to the appeal may request that additional portions of the record on appeal be prepared as provided in Rule 321 *et seq.*, or any party may request or the court may order the circuit clerk to file the record, which shall be filed within 35 days of the date on which such leave was allowed. The filing of an additional record shall not affect the time for filing briefs under this rule.

(8) *Briefs.* A party may allow his or her petition or answer to stand as his or her brief or may file a brief in lieu of or in addition thereto. If a party elects to allow a petition or answer to stand as a brief, he or she must notify the other parties and the clerk of the Appellate Court on or before the due date of the brief. If the appellant elects to file a brief, it must be filed within 35 days from the date on which leave to appeal was granted. All briefs shall conform to the schedule and requirements as provided in Rules 341 through 343. Oral argument may be requested as provided in Rule 352(a).

Amended October 21, 1969, effective January 1, 1970, and amended effective September 1, 1974; amended July 30, 1979, effective October 15, 1979; amended February 19, 1982, effective April 1, 1982; 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 September 16, 1983, effective October 1, 1983; amended December 17, 1993, effective February 1, 1994; amended March 26, 1996, effective immediately; amended December 31, 2002, effective January 1, 2003; amended December 5, 2003, effective January 1, 2004; amended May 24, 2006, effective September 1, 2006; amended February 26, 2010, effective immediately; amended February 16, 2011, effective immediately; amended May 29, 2014, eff. July 1, 2014; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended Mar. 8, 2016, eff. immediately; amended June 22, 2017, eff. July 1, 2017; amended June 28, 2017, eff. July 1, 2017; amended Sept. 15, 2017, eff. Nov. 1, 2017; amended Sept. 26, 2019, eff. Oct. 1, 2019; amended Sept. 30, 2020, eff. Oct. 1, 2020.

#### Committee Comment

(March 8, 2016)

#### Special Supreme Court Committee on Child Custody Issues

The Illinois Marriage and Dissolution of Marriage Act, Pub. Act 99-90 (eff. Jan. 1, 2016) (amending 750 ILCS 5/101 *et seq.*), has changed the terms “Custody,” “Visitation” (as to parents) and “Removal” to “Allocation of Parental Responsibilities,” “Parenting Time” and “Relocation.” These rules are being amended to reflect those changes. The rules utilize both “custody” and “allocation of parental responsibilities” in recognition that some legislative enactments covered by the rules utilize the term “custody” while the Illinois Marriage and Dissolution of Marriage Act and the Illinois Parentage Act of 2015 utilize the term “allocation of parental responsibilities.” The

Special Committee has attempted to adhere to the usage found in the applicable legislative enactments.

Committee Comment  
(May 29, 2014)

Subparagraph (c)(5)

In exceptional circumstances or by agreement of the parties, it may be appropriate for the parties to continue with certain aspects of the case (such as discovery, for example), provided that such continuation does not interfere with appellate review or otherwise offend the notions of substantial justice. If the stay is vacated or modified, the trial court remains (as with any interlocutory appeal) restrained from entering an order which interferes with the appellate review, such as modifying the trial court order that is the subject of the appeal.

Committee Comments  
(February 26, 2010)

In 2010, this rule was reorganized and renumbered for the sake of clarity. No substantive changes were made in this revision.

Paragraph (b)

Paragraph (b) was added to Rule 306 in 2004 to provide a special, expedited procedure to be followed in petitioning for leave to appeal from interlocutory orders affecting the care and custody of unemancipated minors. This procedure applies only to petitions for leave to appeal filed pursuant to subparagraph (a)(5) of this rule. The goal of this special procedure is to provide a faster means for achieving permanency for not only abused or neglected children, but also children whose custody is at issue in dissolution of marriage, adoption, and other proceedings.

Paragraph (c)

Paragraph (c) sets forth the procedures to be followed in petitioning for leave to appeal pursuant to any subparagraph of paragraph (a) except subparagraph (a)(5).

Subparagraph (c)(1)

This subparagraph was amended in 1979 to reflect changes in Rule 321 that eliminated the requirement that a praecipe for the record be filed.

Subparagraph (c)(2)

Subparagraph (c)(2) permits answers to the petition to be filed within 21 days after the due date of the petition instead of “within 15 days after the petition is served upon him.” They are not

required to be printed as formerly, but may also be otherwise duplicated as are briefs. Former Rule 30 was silent as to a reply. Subparagraph (c)(2) provides that there shall be no reply except by leave.

#### Subparagraph (c)(3)

As originally promulgated, and as amended in 1974, this subparagraph provided that “excerpts from record” or an abstract should be filed. This represented a change from former Rule 30, which required the filing of a printed abstract of record. It was amended in 1979 to delete reference to “excerpts from record” to reflect the changes made in that year to provide for the hearing of most appeals on the original record, thus dispensing with the reproduction of “excerpts” from the record, and with an abstract as well, unless the court orders that one must be prepared. See the committee comments to Rule 342.

#### Subparagraph (c)(4)

Subparagraph (c)(4) is a general provision for extensions of time and does not change the practice in existence at the time of the adoption of the rule. In 1982, this subparagraph was reworded but not changed in substance.

#### Subparagraph (c)(5)

Subparagraph (c)(5) provides that the granting of the appeal from an order allowing a new trial *ipso facto* operates as a stay. The former rule required the giving of some kind of a bond to make a stay effective. A bond is not always appropriate. Subparagraph (c)(5) requires a bond only after a showing of good cause.

#### Subparagraph (c)(6)

As originally adopted Rule 343 provided that in cases in which a reviewing court grants leave to appeal, or allows an appeal as a matter of right, the appellant must file his brief within 35 days of the order allowing the appeal, and that in cases in which a party allows his petition for leave to appeal or his answer to such a petition to stand as his brief, he must notify the other parties and the clerk of the reviewing court. These provisions were applicable to all cases in which leave to appeal was required, whether to the Appellate Court or the Supreme Court. Rules 306(c)(6), 308(d), and 315(g) provided for the briefing schedule by cross-reference to Rule 343. In 1974, Rule 315(g), dealing with briefs in appeals to the Supreme Court from the Appellate Court, was amended to provide in detail for the filing of briefs, leaving the general language in Rule 343(a) relating to the filing of the appellant’s brief in cases taken on motion for leave to appeal applicable only to appeals under Rules 306 and 308, and the provision for notice of intention to let the petition or answer stand as a brief applicable only to appeals under Rule 306. In the interest of clarity these provisions were placed in Rules 306(c)(6) and 308(d) and the general language deleted from Rule 343(a). This represents no change in practice. The briefing schedule after the due date of the appellant’s

brief (35 days for the appellee's brief and 14 days for a reply brief) remains governed by Rule 343(a).

#### Subparagraph (c)(7)

Former Rule 30 provided that after allowance of the appeal and the filing of the stay bond, "The case is then pending on appeal." This obvious fact was omitted from Rule 306 as unnecessary. Subparagraph (c)(7) does provide that if the appeal is granted oral argument may be requested as provided in Rule 352.

#### Committee Comments (Revised September 1983)

This rule replaced former Rule 30, which was in effect from January 1, 1964, to December 31, 1966, and which in turn was derived from former section 77(2) of the Civil Practice Act, repealed effective January 1, 1964 (Laws of 1963, p. 2691, § 2). The Judicial Article of the new Illinois constitution (art. VI, § 6) contains substantially the same language on interlocutory appeals that appeared in the 1964 Judicial Amendment, and authorizes this rule in the following language:

"The Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of the Circuit Courts."

#### Paragraph (a)

Paragraph (a), as originally adopted, made no change in the prior rule except to permit the petition to be duplicated in the same manner as a brief (see Rule 344) instead of always being printed. The petition is to be filed within 30 days, subject to an extension of time under paragraph (e).

Paragraph (a) was amended in 1969 by adding subparagraph (2), denominating as subparagraph (1) what was formerly entire paragraph (a), and making appropriate changes in the headings. Subparagraph (2), together with Rule 366(b)(2)(v), also added in 1969, abrogates the ruling in *Keen v. Davis*, 108 Ill. App. 2d 55, 63-64 (5th Dist. 1969), denying reviewability, on appeal from an order allowing a new trial, of questions raised by other rulings of the trial court on the post-trial motion. Revised Rule 366(b)(2)(v) makes it clear that the absence of a final judgment is not a bar to review of all the rulings of the trial court on the post-trial motions. See the Committee Comments to that rule.

In 1982, paragraph (a)(1) was amended by adding subparagraphs (i), (ii), (iii), and (iv), expanding the instances in which appeals could be sought in the appellate court. Also in 1982, subparagraph (a)(2) was amended to make it clear that post-trial motions are before the reviewing court without the necessity of filing a cross-appeal only when the appellate court has granted a petition for leave to appeal an order granting a new trial.

In 1983, paragraph (a)(1)(ii) was amended to permit a party to seek leave to appeal from a circuit court order allowing or denying a motion to transfer a case to another county within Illinois

on the grounds of *forum non conveniens*. See *Torres v. Walsh* (1983), 97 Ill. 2d 338; *Mesa v. Chicago & North Western Transportation Co.* (1933), 97 Ill. 2d 356.

#### Paragraph (b)

Paragraph (b) was amended in 1979 to reflect changes in Rule 321 that eliminated the requirement that a praecipe for record be filed.

#### Paragraph (c)

Paragraph (c) permits answers to the petition to be filed within 21 days after the due date of the petition instead of “within 15 days after the petition is served upon him.” They are not required to be printed as formerly, but may also be otherwise duplicated as are briefs. Former Rule 30 was silent as to a reply. Paragraph (c) provides that there shall be no reply except by leave.

#### Paragraph (d)

As originally promulgated, and as amended in 1974, paragraph (d) provided that “excerpts from record” or an abstract should be filed. This represented a change from former Rule 30, which required the filing of a printed abstract of record. It was amended in 1979 to delete reference to “excerpts from record” to reflect the changes made in that year to provide for the hearing of most appeals on the original record, thus dispensing with the reproduction of “excerpts” from the record, and with an abstract as well, unless the court orders that one must be prepared. See the committee comments to Rule 342.

#### Paragraph (e)

Paragraph (e) is a general provision for extensions of time and does not change the practice in existence at the time of the adoption of the rule. In 1982, this paragraph was reworded but not changed in substance.

#### Paragraph (f)

Paragraph (f) provides that the granting of the appeal from an order allowing a new trial *ipso facto* operates as a stay. The former rule required the giving of some kind of a bond to make a stay effective. A bond is not always appropriate. Paragraph (f) requires a bond only after a showing of good cause.

#### Paragraph (g)

As originally adopted Rule 343 provided that in cases in which a reviewing court grants leave to appeal, or allows an appeal as a matter of right, the appellant must file his brief within 35 days of the order allowing the appeal, and that in cases in which a party allows his petition for leave to appeal or his answer to such a petition to stand as his brief, he must notify the other parties and the

clerk of the reviewing court. These provisions were applicable to all cases in which leave to appeal was required, whether to the Appellate Court or the Supreme Court. Rules 306(g), 308(d), and 315(g) provided for the briefing schedule by cross-reference to Rule 343. In 1974, Rule 315(g), dealing with briefs in appeals to the Supreme Court from the Appellate Court, was amended to provide in detail for the filing of briefs, leaving the general language in Rule 343(a) relating to the filing of the appellant's brief in cases taken on motion for leave to appeal applicable only to appeals under Rules 306 and 308, and the provision for notice of intention to let the petition or answer stand as a brief applicable only to appeals under Rule 306. In the interest of clarity these provisions were placed in Rules 306(g) and 308(d) and the general language deleted from Rule 343(a). This represents no change in practice. The briefing schedule after the due date of the appellant's brief (35 days for the appellee's brief and 14 days for a reply brief) remains governed by Rule 343(a).

#### Paragraph (h)

Former Rule 30 provided that after allowance of the appeal and the filing of the stay bond, "The case is then pending on appeal." This obvious fact was omitted from Rule 306 as unnecessary. Paragraph (h) does provide that if the appeal is granted oral argument may be requested as provided in Rule 352.