

**From:** [Sherwin D.Abrams](#)  
**To:** [Amy Bowne](#)  
**Subject:** Proposal 19-11  
**Date:** Wednesday, June 10, 2020 2:15:12 PM  
**Attachments:** [Rule 23.docx](#)

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If Rule 23 were deleted in its entirety as proposed:

1. Nothing would require the appellate court to explain the reasons for any of its decisions as now required by Rule 23 (a), (b), and (c).
2. Nothing would require that any decision of the appellate court be posted on the Court's website (published) as now required by Rule 23(g).

I suggest that Rule 23(e) be amended so as to permit Rule 23 orders to be cited for whatever persuasive value they may have but to remain non-precedential.

I suggest that Rule 23(f) be amended to delete references to "publish". The reference is amended to refer to dispose of an appeal by opinion.

Rule 23 with my suggested amendments is attached. If you prefer, I can provide a redlined version in MS Word and as a PDF.

Respectfully,

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## Rule 23. Disposition of Cases in the Appellate Court

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

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

- (1) the decision establishes a new rule of law or modifies, explains or criticizes an existing rule of law; or
- (2) the decision resolves, creates, or avoids an apparent conflict of authority within the Appellate Court.

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

- (1) in a separate introductory paragraph, a concise syllabus of the court's holding(s) in the case;
- (2) the germane facts;
- (3) the issues and contentions of the parties when appropriate;
- (4) the reasons for the decision; and
- (5) the judgment of the court.

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

- (1) the Appellate Court lacks jurisdiction;
- (2) the disposition is clearly controlled by case law precedent, statute, or rules of court;
- (3) the appeal is moot;
- (4) the issues involve no more than an application of well-settled rules to recurring fact situations;
- (5) the opinion or findings of fact and conclusions of law of the trial court or agency adequately explain the decision;
- (6) no error of law appears on the record;
- (7) the trial court or agency did not abuse its discretion; or
- (8) the record does not demonstrate that the decision of the trier of fact is against the manifest weight of the evidence.

When a summary order is issued it shall contain:

- (i) a statement describing the nature of the case and the dispositive issues without a discussion of the facts;
- (ii) a citation to controlling precedent, if any; and
- (iii) the judgment of the court and a citation to one or more of the criteria under this rule which supports the judgment, *e.g.*, "Affirmed in accordance with Supreme Court Rule 23(c)(1)."

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

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

**(e) Effect of Orders.**

(1) An order entered under subpart (b) or (c) of this rule is not precedential ~~and~~ *but* may ~~not~~ be cited by any party ~~except~~ *for whatever persuasive value it may have and* to support contentions of double jeopardy, *res judicata*, collateral estoppel or law of the case. When cited for these purposes, a copy of the order, *if not available on the Court's website*, shall be furnished to all other counsel and the court.

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

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

**(f) Motions to ~~Publish~~ Dispose of by Opinion.** If an appeal is disposed of by order, any party may move to have the ~~order published~~ *appeal disposed of by* as an opinion. The motion shall set forth the reasons why the order satisfies the criteria for disposition as an opinion and shall be filed within 21 days of the entry of the order. The appellate court shall retain jurisdiction to grant or deny a timely filed motion to ~~publish~~ *dispose of the appeal by opinion* irrespective of the filing of a petition for leave to appeal under Rule 315 and shall rule on the motion to ~~publish~~ *dispose of by opinion* within 14 days of its filing, prior to disposition by the Supreme Court of any petition for leave to appeal.

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

**(h) Public-Domain Case Designators**

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