Rule 308. Certified Questions

(a) Requests. When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved. Such a statement may be made at the time of the entry of the order or thereafter on the court's own motion or on motion of any party. The Appellate Court may thereupon in its discretion allow an appeal from the order.

(b) How Sought. The appeal will be sought by filing an application for leave to appeal with the clerk of the Appellate Court within 30 days after the entry of the order in the trial court or the making of the prescribed statement by the trial court, whichever is later.

(c) Application; Answer. The application shall contain a statement of the facts necessary to an understanding of the question of law determined by the order of the trial court; a statement of the question itself; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The application shall be accompanied by an original supporting record (Rule 328), containing the order appealed from and other parts of the trial court record necessary for the determination of the application for permission to appeal. Within 21 days after the due date of the application, an adverse party may file an answer in opposition, together with an original of a supplementary supporting record containing any additional parts of the record the adverse party desires to have considered by the Appellate Court. The application and answer shall be submitted without oral argument unless otherwise ordered.

(d) After the applicant has filed the application 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.

(e) Record; Briefs. If leave to appeal is allowed, any party may request that a complete record on appeal be filed , or the court may order the appellant to file the record within 35 days of the date on which such leave was allowed. The appellant shall file a brief in the reviewing court within the same 35 days. Otherwise the schedule and requirements for briefs shall be as provided in Rules 341 through 344.

(f) Stay. The application for permission to appeal or the granting thereof shall not stay proceedings in the trial court unless the trial court or the Appellate Court or a judge thereof shall so order.

Amended effective September 1, 1974; amended July 30, 1979, effective October 15, 1979; amended December 17, 1993, effective February 1, 1994; amended February 26, 2010, effective immediately; amended Dec. 11, 2014, eff. Jan. 1, 2015; amended Oct. 15, 2015, eff. Jan. 1, 2016; amended June 22, 2017, eff. July 1, 2017; amended Sept. 26, 2019, eff. Oct. 1, 2019.

Committee Comments (Revised 1979)

This rule was new in 1967. Prior to that time appeals from interlocutory orders had been permitted in Illinois only in a few specified classes of cases. (See former Rule 31 and its

predecessor, former section 78 of the Civil Practice Act (Ill. Rev. Stat. 1961, ch. 110, par. 78).) This was also generally true in the Federal courts. In 1958, however, Congress adopted what is now 28 U.S.C. § 1292(b), which permits an interlocutory appeal from other than final orders when the trial court "shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that immediate appeal from the order may materially advance the ultimate termination of the litigation." The court of appeals may then "in its discretion" permit the appeal to be taken. Thus, this type of interlocutory appeal is allowed when both the trial and appellate courts agree that an appeal will expedite the disposition of the litigation, and also that there is a substantial question of law to be decided. The appellate courts themselves can insure that this authority to allow interlocutory appeals is not abused. This power has been sparingly exercised in the Federal courts, but it has proved valuable.

This rule establishes a similar procedure for Illinois. One change from the Federal rule is to eliminate the requirement that the question raised be a "controlling" one. The meaning of "controlling" has not been clear, despite many cases on the point. and experience has shown that sometimes an important question of law that only arguably could be said to be controlling should be heard on appeal without awaiting final judgment.

The 1964 judicial article authorized the Supreme Court to provide by rule for appeals to the Appellate Court of other than final judgments of the circuit court. Arguably, however, it made no provision for rules permitting direct appeal to the Supreme Court except in the case of final judgments. Accordingly, Rule 308 was made applicable only to appeals to the Appellate Court, but it permits the Appellate Court to allow interlocutory appeals in classes of cases in which the *final* judgment is appealable only to the Supreme Court. Though the reference to "final judgments" in section 5 of the 1964 judicial article was not carried forward into article VI, section 4 of the new constitution, direct appeals to the Supreme Court remain limited to appeals from final judgments. See Rule 302.

Normally the interlocutory appeal will not stay proceedings in the trial court. The case may proceed in that court unless the trial court or the Appellate Court or a judge thereof otherwise orders. This will discourage an attempt to take an interlocutory appeal with a motive of delay.

In 1974, paragraph (b) was amended to substitute the word "application" appearing in the last sentence of the paragraph for the word "petition" to make the terminology uniform. At the same time paragraph (d) was amended to insert the clause "the appellant shall file his brief in the reviewing court within 35 days of the date on which such leave was allowed." This requirement formerly appeared in Rule 343(a). See the committee comments to Rule 306, paragraph (g).

Until 1979, paragraph (d) provided that, if appeal were allowed, "[e]xcerpts from record or an abstract shall be prepared and filed as provided in Rule 342." In that year Rule 342 was amended to eliminate altogether the practice of duplicating and filing excerpts from the record and to provide that no abstract shall be filed unless by order of the reviewing court. Accordingly, paragraph (d) was amended to reflect this change. See the committee comments to Rule 342.