

M.R. 3140

IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS

Order entered October 6, 2016.

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

Effective November 1, 2016, Illinois Supreme Court Rules 12, 307, 324, and 373 are amended, as follows.

Amended Rule 12

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

(a) **Filing.** When service of a document 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, person,~~ as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2012)), 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, person,~~ as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2012)), who deposited the document in the mail or delivered the document 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 mail by a *pro se* petitioner from a correctional institution, ~~by affidavit, or~~ by certification as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2012)) of the person who deposited the document in the institutional mail, stating the time and place of deposit and the complete address to which the document was to be delivered;

(5) in case of service by facsimile transmission, by certificate of the ~~attorney or affidavit of a person other than the attorney, person,~~ as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2012)), who transmitted the document 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; or-

(6) in case of service by e-mail, by certificate of the ~~attorney or affidavit of a person other than the attorney, person,~~ as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2012)), who transmitted the document via e-mail, stating the time and place of transmission to a designated e-mail address of record.

FILED

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SUPREME COURT
CLERK

(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.

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

(f) Effective Date of Service by E-mail. Service by e-mail is complete on the first court day following transmission.

(g) Effective Date of Service by Electronic In-box. Service by electronic in-box under Rule 11(b)(7) 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; amended Dec. 21, 2012, eff. Jan. 1, 2013; amended Jan. 4, 2013, eff. immediately; amended September 19, 2014, eff. immediately; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended Oct. 6, eff. Nov. 1, 2016.

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 307

Rule 307. Interlocutory Appeals as of Right

(a) Orders Appealable; Time. An appeal may be taken to the Appellate Court from an interlocutory order of court:

(1) granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction;

(2) appointing or refusing to appoint a receiver or sequestrator;

(3) giving or refusing to give other or further powers or property to a receiver or sequestrator already appointed;

(4) placing or refusing to place a mortgagee in possession of mortgaged premises;

(5) appointing or refusing to appoint a receiver, liquidator, rehabilitator, or other similar officer for a bank, savings and loan association, currency exchange, insurance company, or other financial institution, or granting or refusing to grant custody of the institution or requiring turnover of any of its assets;

(6) terminating parental rights or granting, denying or revoking temporary commitment in adoption proceedings commenced pursuant to section 5 of the Adoption Act (750 ILCS 50/5);

(7) determining issues raised in proceedings to exercise the right of eminent domain under section 20-5-10 of the Eminent Domain Act, but the procedure for appeal and stay shall be as provided in that section.

Except as provided in paragraphs (b) and (d), the appeal must be perfected within 30 days from the entry of the interlocutory order by filing a notice of appeal designated "Notice of Interlocutory Appeal" conforming substantially to the notice of appeal in other cases. A Rule 328 supporting record must be filed in the Appellate Court within the same 30 days unless the time for filing the Rule 328 supporting record is extended by the Appellate Court or any judge thereof. A Rule 328 supporting record shall not be filed in cases arising under the Juvenile Court Act where an order terminating parental rights has been entered. In those cases, a Rule 323 record shall be filed.

(b) Motion to Vacate. If an interlocutory order is entered on *ex parte* application, the party intending to take an appeal therefrom shall first present, on notice, a motion to the trial court to vacate the order. An appeal may be taken if the motion is denied, or if the court does not act thereon within 7 days after its presentation. The 30 days allowed for taking an appeal and filing the Rule 328 supporting record begins to run from the day the motion is denied or from the last day for action thereon.

(c) Time for Briefs and Abstract if an Abstract Is Required. Unless the Appellate Court orders a different schedule or orders that no briefs be filed, the schedule for filing briefs shall be as follows: The brief of appellant shall be filed in the Appellate Court, with proof of service, within 7 days from the filing of the Rule 328 supporting record on appeal. Within 7 days from the date appellant's brief is filed, the appellee shall file his brief and any supplemental Rule 328 supporting record in the Appellate Court with proof of service. Within 7 days from the date appellee's brief is filed, appellant may serve and file a reply brief. The briefs shall otherwise conform to the requirements of Rules 341 through 344. If the Appellate Court so orders, an abstract shall be prepared and filed as provided in Rule 342.

(d) Appeals of Temporary Restraining Orders; Time; Memoranda.

(1) *Petition; Service; Record.* Unless another form is ordered by the Appellate Court, review of the granting or denial of a temporary restraining order or an order modifying, dissolving, or refusing to dissolve or modify a temporary restraining order as authorized in paragraph (a) shall be by petition filed in the Appellate Court, but notice of interlocutory appeal as provided in paragraph (a) shall also be filed in the circuit court, within the same time for filing the petition. The petition shall be in writing, state the relief requested and the grounds for the relief requested, and shall be filed in the Appellate Court, with proof of personal, e-mail or facsimile service as provided in Rule 11, within two days of the entry or denial of the order from which review is being sought. An appropriate supporting record shall accompany the petition, which shall include the notice of interlocutory appeal, the temporary restraining order or the proposed temporary restraining order, the complaint, the motion requesting the granting of the temporary restraining 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. Documents referenced in this subsection (d)(1) may be filed pursuant to Rule 373 but only if sent by overnight delivery.

(2) *Legal Memoranda.* The petitioner may file a memorandum supporting the petition which shall not exceed 15 typewritten pages and which must also be filed within two days of the entry of the order that is being appealed under paragraph 1 of this section. The respondent shall file, with proof of personal, e-mail or facsimile service as provided in Rule 11, any responding memorandum within two days following the filing of the petition, supporting record, and any memorandum which must be ~~personally~~-served upon the respondent personally or by facsimile or e-mail. The respondent's memorandum may not exceed 15 typewritten pages and must also be ~~personally~~-served upon the petitioner personally or by facsimile or e-mail. The legal memoranda referenced in this subsection (d)(2) may be filed in the Appellate Court pursuant to Rule 373 but only if sent by overnight delivery.

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

(4) *Time for Decision; Oral Argument.* After the petitioner has filed the petition, supporting record, and any memorandum and the time for filing any responding memorandum has expired, the Appellate Court shall consider and decide the petition within five days thereafter. Oral argument on the petition will not be heard.

(5) *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 the other materials need not be filed.

Amended October 21, 1969, effective January 1, 1970; amended July 30, 1979, effective October 15, 1979; amended May 28, 1982, effective July 1, 1982; amended November 21, 1988, effective January 1, 1989; amended June 19, 1989, effective August 1, 1989; amended December 17, 1993, effective February 1, 1994; amended December 1, 1995, effective immediately; amended July 6, 2000, effective immediately; amended November 27, 2002, effective January 1, 2003; amendment of November 27, 2002, vacated December 31, 2002; amended March 20, 2009, effective immediately; amended February 26, 2010, effective immediately; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended Oct. 6, 2016, eff. Nov. 1, 2016.

Committee Comments
(Revised 1979)

This rule replaced former Rule 31, effective January 1, 1964, and in effect until January 1, 1967. That rule supplanted former section 78 of the Civil Practice Act, repealed effective January 1, 1964 (Laws of 1963, p. 2691, §1), section 7 of the 1964 judicial article (now section 6 of new article VI) having given the Supreme Court power to provide by rule for interlocutory appeals to the Appellate Court. The word "order" is substituted for "order or decree" throughout the rule, without change of meaning. (See Rule 2.)

Stays pending appeal are governed by Rule 305.

Paragraph (a)

Paragraph (a) provides for a designation—"Notice of Interlocutory Appeal"—on the notice of appeal, and continues the theory that the filing of the notice of appeal and not the filing of a bond perfects the appeal. The paragraph was amended in 1969 by adding items (5) through (7) to the

list of appealable interlocutory orders. The amendment carries out the policy of covering all interlocutory appeals in the Supreme Court rules, as contemplated by section 7 of the 1964 judicial article (now section 6 of new article VI). The procedure provided in the Eminent Domain Act for appeal and stay in quick-take cases (Ill. Rev. Stat. 1967, ch. 47, par. 2.2(b)) is incorporated by reference in item (7), in lieu of detailed coverage of these matters in the rules, because of the peculiar problems in an appeal of this kind and its relationship to the condemnation proceeding as a whole.

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

Paragraph (b)

Paragraph (b) is the same as former Rule 31(2) with slight verbal changes.

Paragraph (c)

Paragraph (c), establishing the briefing schedule as 7 days for appellant, 7 days for appellee, and 7 days for the reply brief, all dating from the filing of the record and the filing of the preceding brief (instead of from the due dates thereof), replaces the schedules in Rule 5 of the First District Appellate Court and Rule 23 of the other appellate districts (former Uniform Appellate Court Rule 23). The paragraph gives the court the right to order a different briefing schedule, or to dispense with briefs altogether. Until 1979, it was generally required that an abstract of the record or a reproduction of excerpts from the record be filed in the reviewing court in addition to the record and the briefs. Paragraph (d) provided that where the appellant elected to file excerpts from the record instead of an abstract the excerpts had to be filed within 7 days after the filing of the reply brief. The rules were amended in 1979 to provide that unless the Appellate Court orders that an abstract be prepared and filed, all cases will be heard on the original record and the briefs, the appellant's brief to include an appendix described in Rule 342. Appropriate changes were made in Rule 307(c) to reflect this change in the practice.

Amended Rule 324

Rule 324. Preparation and Certification by the Circuit Clerk of the Record on Appeal

The clerk of the trial court shall prepare, bind, and certify the record on appeal. The record shall be arranged in three sections: the common-law record, the report of proceedings, and the trial exhibits. The common-law record and report of proceedings shall be in chronological order. Beginning with the common-law record, each separately bound volume of the common-law record and report of proceedings shall be numbered consecutively. All pages of the common-law record shall be numbered consecutively with the letter "C" preceding the number of each page. All pages of the report of proceedings shall be numbered consecutively by volume. In lieu of renumbering the pages of exhibits, a list of exhibit numbers shall be provided. No bound volume of the record shall exceed 250 pages, and each volume shall be securely bound. There shall be only one record on appeal even if more than one appeal is taken. The certificate shall be in the form prescribed below, and a copy shall be delivered to appellant at the time the record is

forwarded to the reviewing court. The clerk shall accept for inclusion in the record or a supplemental record under Rule 329 an original or a copy of any filing that carries a filing stamp of the clerk of the circuit court without any need for further authentication. Notice of filing must be given to all parties of record.

Appeal to the _____ Court of Illinois
_____ District
From the Circuit Court of the _____ Judicial Circuit
_____ County, Illinois

[Names of all plaintiffs,
including intervening plaintiffs]

v.

Circuit Court No. _____
Trial Judge _____
Reviewing Court No. _____

[Names of all defendants,
including intervening or
impleaded defendants]

(The designations of appellant, appellee, cross-appellant, and cross-appellee may be added to follow the trial court designations. If not all plaintiffs or all defendants are appellants or appellees, the names of those who are should be included parenthetically just below the title.)

CERTIFICATION OF RECORD

The record has been prepared and certified in the form required for transmission to the reviewing court. It consists of:

_____ volume/s of Common-Law Record
_____ volume/s of Report of Proceedings
_____ volume/s or description of Exhibits

(Here set forth a detailed table of contents of the record on appeal.)

Kindly acknowledge receipt of this record on the attached copy of this letter.

I do further certify that this certification of the record pursuant to Supreme Court Rule 324 issued out of my office this _____ day of _____, 20__.

Clerk of the Circuit Court

cc: _____

Appellant's Attorney

Address

City, State & Zip

Received this above record this _____ day of _____, 20 .

Clerk of the Reviewing Court

Amended October 21, 1969, effective January 1, 1970; amended July 30, 1979, effective October 15, 1979; amended July 1, 1985, effective August 1, 1985; amended April 10, 1987, effective August 1, 1987; amended December 17, 1993, effective February 1, 1994; amended May 30, 2008, effective immediately; amended Oct. 15, 2015, eff. Jan. 1, 2016; amended Oct. 6, 2016, eff. Nov. 1, 2016.

Committee Comments
(Revised July 30, 1979)

This rule was based in part on former Rules 36(1)(b) and (2)(a), and was in part new in 1967. As originally adopted, it provided in part that “[u]nless otherwise ordered by the trial or reviewing court, the original papers in the trial court record shall be used and copies need not be furnished by the parties.” Thus the use of the original papers was permissive, though the contemplation was that in most instances original papers would be used. In 1979 this provision was deleted and Rule 321 was amended to provide that the record on appeal shall consist of the “entire original trial court record,” unless the parties stipulate for or the trial or reviewing court orders “less.” See the committee comments to Rule 321.

Commentary
(December 17, 1993)

This rule is amended to explain more specifically the manner in which the record on appeal shall be prepared. The circuit clerk now is required to provide the reviewing court with an inventory of exhibits, and the rule establishes a 250-page limit per volume of record to make the record easier to use.

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) or, in the case of mailing by a *pro se* petitioner from a correctional institution, as provided in subpart (b)(4) of Rule 12. This rule also applies to a motion directed against the judgment and 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; amended September 19, 2014, eff. immediately; amended Oct. 6, 2016; eff. Nov. 1, 2016.

Committee Comments (Revised July 1, 1985)

Rule 373 was new in 1967. It was designed to make it unnecessary for counsel to make sure that briefs and other papers mailed before the filing date actually reach the reviewing court within the time limit. Receipt of the paper in the clerk's office a day or two later will not delay the appeal. As originally adopted the rule provided that the time of mailing might be evidenced by the post mark affixed by a United States Post Office. Because of problems with the legibility of post marks, and delay in affixing them in some cases, the rule was amended in 1981 to provide for the use of affidavits of mailing or United States Postal Service certificates of mailing.

The 1985 amendment regarding the recording of a filing date was intended to simplify record keeping in the appellate and supreme courts.

Commentary (December 17, 1993)

The rule is revised to make the method of proof of mailing consistent with practice under Rule 12.

Reference to the notice of appeal coming within the scope of the rule is a reflection of existing law (see *Harrisburg-Raleigh Airport Authority v. Department of Revenue* (1989), 126 Ill. 2d 326).

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.