June 10, 2020

Via Email

Amy Bowne
Committee Secretary, Supreme Court Rules Committee
222 North LaSalle Street, 13th Floor
Chicago, Illinois 60601
abowne@illinoiscourts.gov

Re: Appellate Lawyers Association's Responses to Proposal Nos. 19–05 and 19– 14

Dear Ms. Bowne:

On behalf of the Appellate Lawyers Association, I write to express the ALA's position on Proposal Nos. 19–05 and 19–14, which are scheduled to be discussed at the Illinois Supreme Court Rules Committee's next public hearing on June 24, 2020.

I. Proposal No. 19–05

Proposal No. 19–05 contains proposed amendments to Illinois Supreme Court Rules 306, 315, 316, 318, 341, and 368. As discussed below, the Appellate Lawyers Association opposes the proposed amendments to Rules 306, 315, 341, and 368; supports the proposed amendment to Rule 316 as modified; and supports the proposed amendment to Rule 318.

A. Rule 306

Rule 306 addresses interlocutory appeals by permission. Ill. S. Ct. R. 306. A petition submitted under the rule must be accompanied by a supporting record. Ill. S. Ct. Rule 306(c)(1). Any answering party may submit a supplementary supporting record. Ill. S. Ct. Rule 306(c)(2).

In cases where leave to appeal is granted, the rule allows any party to request preparation of additional portions of the record on appeal. Ill. S. Ct. Rule 306(c)(6). Alternatively, the court may order the appellant to file additional portions of the record. *Id*.

The proposed amendment to Rule 306 states: "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 ~~appellant~~ circuit clerk to file the record . . . ." Proposal No. 19–05, Ill. S. Ct. R. 306(c)(6).

The ALA opposes this amendment on two grounds. *First*, the rule already allows any party to ask the circuit clerk to prepare additional portions of the record. This is accomplished by the rule's reference to "Rule 321 *et seq*.," which set forth the procedures governing the circuit clerk's preparation and transmission of the record. *See* Ill. S. Ct. Rs. 321, 323, 324, 325.

Second, the ALA questions the utility of limiting a reviewing court's authority to order the appellant to prepare additional portions of the record. Rule 306 appeals are expedited interlocutory proceedings. *See* Ill. S. Ct. R. 306(c). The appellant is often in a better position than the circuit clerk's office to move those proceedings forward on the timeline contemplated by the rule. The ALA perceives no harm in letting this procedure stand.

B. Rule 315

Rule 315 addresses, among other things, the time for filing a petition for leave to appeal. Ill. S. Ct. Rule 315(b)(1). Generally, a petition for leave to appeal is due 35 days from the entry of judgment, 35 days from the denial of rehearing, or 35 days from the entry of judgment on rehearing. *See id*.

The proposed amendment to Rule 315 states: "The filing of a corrected opinion by the Appellate Court where no petition for rehearing was filed does not extend the time for a party to file a petition for leave to appeal." Proposal No. 19–05, Ill. S. Ct. R. 315(b)(1).

The ALA opposes this amendment because of the potential for confusion created by the term "corrected opinion." The term is not defined. In the experience of the ALA's members, a "corrected opinion" typically includes only minor changes to punctuation or grammar. But if a "corrected opinion" contains substantive changes, then a party who intends to file a petition for leave to appeal should have the opportunity to address those changes in the party's petition. The proposed amendment does not account for these circumstances.

C. Rule 316

Rule 316 addresses the procedure for appealing from the appellate court to the supreme court based on a certificate of importance. Ill. S. Ct. R. 316. The rule does not limit the length of an application for a certificate of importance. *See id*. Nor does it specify whether an answer to an application may be filed. *See id*.

The proposed amendment to Rule 316 states: "The length of the application shall be governed by Supreme Court Rule 367. No Answer to an application for a certificate of importance will be received unless requested by the Court." Proposal No. 19–05, Ill. S. Ct. R. 316.

The ALA supports both limiting the length of an application for a certificate of importance and adopting a procedure for filing an answer. But to further ensure consistency with references to the appellate court and supreme court within the rule, the ALA suggests inserting "Appellate" before the final reference to "Court": "The length of the application shall be governed by Supreme

Court Rule 367. No Answer to an application for certificate of importance will be received unless requested by the Appellate Court."

D. Rule 318

Rule 318 contains general rules governing all appeals from the appellate court to the supreme court. Ill. S. Ct. R. 318. Under paragraph (c), if it is important for the supreme court to know a party's contentions in the appellate court, then the relevant briefs, as "certified by the clerk" of the appellate court, may be filed in the supreme court. Ill. S. Ct. R. 318(c).

The proposed amendment to Rule 318 states: "If it is important for the Supreme Court to know the contentions of any party in the Appellate Court, e-filed stamped copies of the pertinent Appellate Court briefs certified by the clerk of that court may be filed with ~~in~~ the Supreme Court." Proposal No. 19–05, Ill. S. Ct. R. 318(c).

The ALA supports this amendment. "[E]-filed stamped copies" of appellate briefs bear the same indicia of accuracy as copies "certified by the clerk." And allowing the use of "e-filed stamped copies" will bring Rule 318 into alignment with other e-filing-related rules adopted since e-filing became mandatory statewide.

E. Rule 341

Rule 341 contains the requirements for filing briefs in the appellate and supreme courts. Ill. S. Ct. R. 341. The rule requires briefs to include "[a] summary statement, entitled 'Points and Authorities,' of the points argued and the authorities cited in the argument." Ill. S. Ct. R. 341(h)(1). The rule does not require a separate table of contents. *See* Ill. S. Ct. R. 341(h).

The proposed amendment to Rule 341 states: "The appellant's brief shall contain the following parts in the order named: (1) A table of contents, including the summary statement provided in subsection (2), with page references." Proposal No. 19–05, Ill. S. Ct. R. 341(h)(1). The amendment also requires an appellee's brief to include a table of contents. Proposal No. 19–05, Ill. S. Ct. R. 341(i).

The ALA opposes this amendment. In federal appellate practice, briefs include a table of contents and a table of authorities. *See* Fed. R. App. P. 28(a)(2)–(3). In Illinois, by contrast, the practice has long been to blend the information from a table of contents and table of authorities into a single statement of points and authorities *See* Ill. S. Ct. R. 341(h)(1). The ALA recommends leaving the rule in its current form.

F. Rule 368

Rule 368 addresses the issuance, stay, and recall of mandates from the reviewing court. Ill. S. Ct. Rule 368(a). Generally, a mandate will issue no earlier than 35 days from the entry of judgment. *Id*. But a timely filing of a petition for rehearing will stay the mandate until the

disposition of the petition. *Id*. If the petition is denied, then the mandate will issue no earlier than 35 days after the entry of the order denying the petition. *Id*.

The proposed amendment to Rule 368, which mirrors the proposed amendment to Rule 315, states: "The filing of a corrected opinion where no petition for rehearing has been filed does not extend the time for transmission of the mandate." Proposal No. 19–05, Ill. S. Ct. R. 368(a).

The ALA opposes this amendment for the same reasons it opposes the proposed amendment to Rule 315. The term "corrected opinion," which is undefined, could cause confusion. In the experience of the ALA's members, a "corrected opinion" typically includes only minor changes to punctuation or grammar. But if a "corrected opinion" contains substantive changes, then a party who intends to file a petition for leave to appeal should have the opportunity to address those changes in the party's petition. Generally, the filing of a petition for leave to appeal automatically stays the appellate court's mandate. *See* Ill. S. Ct. R. 368(b). If a "corrected opinion" resets the deadline for filing a petition for leave to appeal under Rule 315(b), then a "corrected opinion" should also reset the deadline for issuing a mandate under Rule 368(a).

II. Proposal No. 19–14

Proposal No. 19–14 contains a proposed amendment to Illinois Supreme Court Rule 303. Rule 303 states: "No request for reconsideration of a ruling on a postjudgment motion will toll the running of the time within which a notice of appeal must be filed under this rule." Ill. S. Ct. R. 303(a)(2).

The proposed amendment to Rule 303 states: "~~No request for reconsideration of a ruling on a postjudgment motion will~~ During the pendency of the circuit court's jurisdiction over the cause generally, the trial court may entertain a motion to reconsider its denial of a postjudgment motion; however, such a request for reconsideration will not toll the running of the time within which a notice of appeal must be filed under this rule." Proposal No. 19–14, Ill. S. Ct. R. 303(a)(2).

The amendment addresses an issue raised by the partial concurrence/partial dissent in *People v. Orahim*, 2019 IL App (2d) 170257. In *Orahim*, after pleading guilty, the defendant moved to reconsider his sentence. *Id*., ¶ 1. After the motion was denied, but before the thirty-day time period for filing a notice of appeal had expired, the defendant filed a motion to withdraw his guilty plea. *Id*. Roughly a month and a half later, the second motion was denied, and the defendant immediately filed a notice of appeal. *Id*.

The majority held that the circuit court lacked jurisdiction to consider the second motion and that the defendant's notice of appeal was untimely. *See id*., ¶¶ 5, 12. The partial concurrence/partial dissent argued that, although the notice of appeal was untimely, the circuit court had jurisdiction to consider the second motion since the second motion was filed before the deadline for filing a notice of appeal. *Id*., ¶ 15.

The ALA has no objection in principle to clarifying a circuit court's jurisdiction to consider a motion to withdraw a guilty plea after the court denies a motion to reconsider a sentence. But the ALA opposes the proposed amendment for three reasons. *First*, this type of amendment seems better suited to the criminal appellate rules than the civil appellate rules. Although the partial concurrence/partial dissent correctly observed in *Orahim* that "Rule 303(a) has been used as a guide in analyzing criminal appeals," Illinois Supreme Court Rule 606(b) directly addresses "posttrial or postsentencing" motions in the criminal context. *See Orahim*, 2019 IL App (2d) 170257, ¶ 24 n. 7; Ill. S. Ct. R. 606(b). Under Rule 606(b), "[w]hen a timely posttrial or postsentencing motion directed against the judgment has been filed by counsel or by defendant, if not represented by counsel, any notice of appeal filed before the entry of the order disposing of all pending postjudgment motions shall have no effect and shall be stricken by the trial court." Rule 606(b) may be a better starting point for an amendment than Rule 303(a).

Second, the amendment's language regarding "the pendency of the circuit court's jurisdiction over the cause generally" introduces a new concept into the rules that could cause more confusion than it alleviates. The rules currently do not differentiate between "jurisdiction over the cause generally" and other types of jurisdiction. In fact, their references to the jurisdiction of circuit courts are very limited. *See, e.g.,* Ill. S. Ct. Rs. 305(e)(2) (stay of judgments pending appeal in cases involving the termination of parental rights), 311(a)(3) (accelerated docket for child-custody appeals).

Third, in the civil context, nothing in the current version of Rule 303(a)(2) is at odds with a circuit court retaining jurisdiction to decide a motion to reconsider a postjudgment motion. The rule, as drafted, expressly contemplates that a circuit court may consider a "request for reconsideration of a ruling on a postjudgment motion." *See* Ill. S. Ct. R. 303(a)(2). The motion to reconsider, however, will not "toll the running of the time within which a notice of appeal must be filed." *See id*. Put differently, under Rule 303(a)(2) a litigant may move to reconsider the denial of the "one postjudgment motion" the litigant is entitled to file under Rule 274. *See* Ill. S. Ct. R. 274. But the motion to reconsider, unlike the underlying postjudgment motion, does not toll the time for filing a notice of appeal. This is evident from the existing language of the rule.

On behalf of the Appellate Lawyers Association, I thank the Supreme Court Rules Committee for considering our comments on the pending proposals. Please let me know if any additional information would assist the Committee.

Respectfully submitted

/s/ Gretchen Harris Sperry

Gretchen Harris Sperry
President
Appellate Lawyers Association

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