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After the appellate court rules, what's next?

In a series of columns this year, I've discussed the procedural steps to perfect an appeal to the Illinois Appellate Court.

Once the briefing has been completed and the oral arguments delivered, the anxious wait for the appellate court's ruling begins. What are your options if, after all is said and done, the appellate court disagrees with your arguments and rules for the other side?

The answer lies in the Illinois Supreme Court Rules, which provide for further avenues of review.

Petition for rehearing

After the appellate court has issued its judgment, Illinois Supreme Court Rule 367 provides that a petition for rehearing may be filed with the appellate court within 21 days.

The rule reserves the filing of a rehearing petition to those limited instances where a party believes the court "overlooked or misapprehended" certain points in rendering its decision. To that end, the rule specifically states, "Re-argument of the case shall not be made in the petition."

The petition is limited to 27 pages, and the opposing party may file an answer to the petition only when the court either requests that an answer be filed or grants the petition. In such cases, the opposing party has 21 days to file the answer, and the petitioner then has 14 days to file a reply.

The key question in deciding whether to expend resources to file a petition for rehearing is whether the same panel of justices that ruled against your client would change that ruling after reexamining certain issues.

In cases that draw a strong dissent, it may be worth considering a petition for rehearing on

the grounds that the majority may have "overlooked or misapprehended" the law and facts as set forth in the dissenting opinion.

This works best, however, where the majority opinion is silent with respect to the arguments raised in the dissent. Where the majority addresses and rejects the points in the dissenting opinion, however, it appears unlikely that the panel would grant rehearing.

Indeed, the odds don't favor the losing party who files a petition for rehearing, with some commentators estimating that only 1 in 40 petitions is granted. However, the mere grant of a petition does not mean reversal of the original decision; that is a separate hurdle to overcome.

Appeal to the Supreme Court

The second option is to file a petition for leave to appeal with the Illinois Supreme Court. Rule 315 permits a party to request that the high court consider hearing an appeal from an appellate court decision.

The grant or denial of the petition is within the sound discretion of the Supreme Court and is based on its weighing of several factors set forth in the rule, including the following:

- The general importance of the question presented.
- The existence of a conflict between the decision sought to be reviewed and an earlier decision by the Supreme Court or another appellate court division.
- The need for the Supreme Court's exercise of its supervisory authority.
- The final or interlocutory character of the judgment to be reviewed.

Generally, the petition must be filed within 35 days after entry of

ON APPEAL



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judgment in the appellate court. Rule 315 requires the petition to include a statement of the points relied upon in requesting the Supreme Court to review the appellate court judgment; a fair and accurate statement of the facts of the case; a "short argument (including appropriate authorities)" stating why the appellate court decision should be reversed and why review by the Supreme Court is warranted; and an appendix. The petition is limited to 20 pages.

Rule 315 allows an opposing party 14 days within which to file an answer to the petition, setting forth the reasons why the petition should not be granted. The answer is also limited to 20 pages. Often, respondents deem it unnecessary to file an answer, believing the appellate court opinion fully states that party's position.

If the high court grants leave to appeal, the appellant's brief shall be filed within 35 days after

the petition is granted.

Thereafter, the appellee has 35 days to file a brief. Finally, the appellant has 14 days to file a reply.

Statistics reveal that the likelihood of a petition for leave to appeal being granted is very low. The most recent annual report by our Supreme Court shows that an average of less than 5 percent of all petitions are granted.

Generally, the Supreme Court grants review in matters that present issues of importance to the practicing bar and to the general public, not just to the litigants in the case.

Accordingly, matters that present an issue of first impression, that raise an issue of law requiring the court's clarification or that create a conflict with appellate or high court precedent have a greater likelihood of being reviewed by our state's highest tribunal.

Issuance of the mandate

Finally, pursuing further appeal options affects the issuance of the mandate to the circuit court. Rule 368 governs the issuance of mandates from the reviewing court. The "mandate" of a reviewing court is simply its transmittal of its judgment to the circuit court, which reverts the circuit court with jurisdiction.

Rule 368 provides that generally the reviewing court's mandate shall be transmitted to the circuit court no earlier than 35 days after the entry of judgment. The rule further provides that filing a petition for rehearing with the appellate court or a petition for leave to appeal with the Supreme Court stays the issuance of the mandate to the circuit court until the petition is ruled upon and disposed.