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## Appeals to the Illinois Appellate Court

In our last column, we discussed the various paths a case can take to find its way upon the docket of the Illinois Supreme Court.

As we continue our series providing an overview of appellate review, in our next two articles we will outline the various ways a party can appeal to the Illinois Appellate Court. Today, we will focus on appeals from final judgments pursuant to Illinois Supreme Court Rules 303 and 304 as well as upon requests for certified questions pursuant to Rule 308.

Our next article will address interlocutory appeals, which may either be by permission pursuant to Rule 306 or as of right pursuant to Rule 307.

But, first, let's take a brief look at the Illinois Appellate Court. Illinois is divided into five appellate court districts. The 1st District consists solely of Cook County. The remaining 101 counties in the state are divided into four districts and their courthouses: the 2nd District (Elgin); the 3rd District (Ottawa); the 4th District (Springfield); and the 5th District (Mount Vernon).

The jurisdiction of the appellate court is set forth in Article VI, Section 6 of the Illinois Constitution of 1970. This provision states that a party may appeal as a matter of right from final judgments in the circuit court to the Illinois Appellate Court in the judicial district in which the circuit court is located except: 1) in cases appealable directly to the Illinois Supreme Court; and 2) where there is a judgment of acquittal after a trial on the merits in a criminal case.

This constitutional provision further provides that the Illinois Supreme Court may provide by rule for appeals to the appellate court from other than final judgments. The Supreme Court has exercised its rule-making

authority by promulgating the rules discussed in this series of articles.

### Appeals from final judgments — Rules 303 and 304

Pursuant to Supreme Court Rule 303, a party may appeal a final judgment from the circuit court to the appellate court. To do so, the party must file a notice of appeal with the clerk of the circuit court within 30 days after the entry of a final judgment.

If a party has filed a timely post-judgment motion directed against the judgment, the appealing party can file the notice of appeal within 30 days after the entry of the order disposing of the last pending post-judgment motion. Subsection (b) of the rule sets forth the form and content applicable to all notices of appeal.

Supreme Court Rule 304 permits a party to appeal from a final judgment that does not dispose of an entire proceeding. The time for filing the notice of appeal is the same as that provided in Rule 303.

Rule 304(a) permits an appeal where there are multiple parties or multiple claims for relief, but only a final judgment as to one or more but fewer than all of the parties or claims. In order for a party to pursue such an appeal, however, the trial court must make an express written finding that "there is no just reason for delaying either enforcement or appeal or both."

Rule 304(b) allows appeals from certain final judgments that do not dispose of an entire proceeding without the circuit court making the special finding required in Rule 304(a).

These judgments are: 1) A judgment or order entered in the administration of an estate, guardianship or similar proceeding which finally determines a right or status of a party; (2) A judgment or order entered

### ON APPEAL



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in the administration of a receivership, rehabilitation, liquidation or other similar proceeding which finally determines a right or status of a party and which is not appealable under Rule 307(a); 3) A judgment or order granting or denying any of the relief prayed in a petition under 735 ILCS 5/2-1401; 4) A final judgment or order entered in a proceeding under 735 ILCS 5/2-1402; 5) An order finding a person or entity in contempt of court which imposes a monetary or other penalty; and 6) A custody judgment entered pursuant to the Illinois Marriage and Dissolution of Marriage Act (IMDMA) (750 ILCS 5/101 et seq.) or Section 14 of the Illinois Parentage Act of 1984 (750 ILCS 45/14); or a modification of custody entered pursuant to Section 610 of the IMDMA (750 ILCS 5/610) or Section 16 of the Illinois Parentage Act of 1984 (750 ILCS 45/16).

### Certified questions pursuant to Rule 308

Rule 308 allows for a circuit court to certify a question of law for review by the appellate court. When the lower court, in rendering 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 and identify the question of law involved.

This question of law is the "certified question." The certified question can be made at the time of the entry of the interlocutory order or thereafter on the court's own motion or on the motion of any party.

After the trial court certifies a question, the party seeking the appeal must file an application for leave to appeal with the clerk of the appellate court within 14 days after the entry of the interlocutory order or the making of the prescribed statement by the trial court, whichever is later.

The adverse party may file an answer in opposition within 14 days thereafter. Whether to grant the application lies within the sound discretion of the appellate court.

The application for permission to appeal or the granting thereof does not stay the trial court proceedings unless ordered by the trial court or the appellate court.

Stay tuned for our next article in this series, where we discuss interlocutory appeals to the appellate court by permission and as of right pursuant to Supreme Court Rules 306 and 307.