Illinois Association of Defense Trial Counsel
Springfield, Illinois | www.iadtc.org | 800-232-0169
IDC Quarterly | Volume 19, Number 4 (19.4.32)

Appellate Practice Corner

By: Brad A. Elward
Heyl, Royster, Voelker & Allen

Rule 315(a) Petitions for Leave to Appeal: A Practice Primer

Petitioning and obtaining an argument before the Illinois Supreme Court is often viewed as the pinnacle of practice. Yet successfully gaining the court's attention is a difficult and seemingly elusive task. Indeed, properly articulating the grounds of a petition for leave to appeal is decidedly different than drafting an argument in an appellate brief, or even in a substantive supreme court brief. A Rule 315(a) petition must go beyond a mere discussion of error. It must point to how the controversy affects the substance of Illinois law or the "People of the State." The goal of this article is to highlight necessary steps and important considerations when drafting Rule 315(a) petitions.

Statistically Speaking

In 2007, the most recent year for which statistics are available, some 7,631 appeals were filed in the Illinois Appellate Court (a figure down from 7,831 in 2006 and 8,153 in 2005). Of those appeals, 1,712 Rule 315(a) petitions for leave to appeal were filed in the Illinois Supreme Court (down 208 from 2006). More than two-thirds of the petitions filed were in the so-called "People" case settings, *i.e.* criminal cases. Of the total petitions filed, 105 were allowed – 54 in the People cases, and 51 in civil cases. Overall, 6.1 percent of the petitions filed were allowed. The percentage of petitions allowed has fluctuated over the past five years between a low of 4 percent in 2006 and a high of 6.2 percent in 2004. The numbers are as follows:

	Total Filed	**(People)**	**(Civil)**	**Allowed**	**(People)**	**(Civil)**	**Percentage**
2003	1954	1304	650	91	41	50	4.3 %
2004	2058	1387	671	111	56	55	6.2 %
2005	1885	1210	675	88	41	47	4.7 %
2006	1920	1279	641	76	31	45	4.0 %
2007	1712	1169	552	105	54	51	6.1 %

The percentage of Rule 315(a) petitions allowed by the court compares favorably with those of prior years; namely, 4.2 percent in 2002, 6.2 percent in 2001, 5.2 percent in 2000, and 5.3 percent in 1999. Thus, before any work is begun, the chances of obtaining supreme court review are indeed small.

Should I File A Rule 315 Petition?

Perhaps the first question to ask is whether the case is truly one that deserves the attention of the supreme court. As not all adverse trial court decisions justify an appeal, the same can be said with even more certainly in regard to appellate court rulings. It is often noted that the supreme court is not the court of errors. Thus, your first question should be: "Are the issues raised in my case likely to capture the interest of the supreme court?"

Petitions raising erroneous fact-findings or the misapplication of a properly stated rule of law would generally not be allowed. Cases of interest to the supreme court typically involve those which have broad impact on people of the State beyond the controversy between the parties, those issues which involve resolution of significant conflicts between decisions of the appellate court districts, or recurring substantial controversies. As discussed later, the rules provide some guidance as to what issues might capture the court's attention.

Petitions Generally

A Rule 315(a) petition for leave to appeal may be filed by any party in any case not appealable from the appellate court as a matter of right. Whether such a petition will be granted is a matter of sound judicial discretion. Few cases provide any real discussion of how that discretion is to be exercised. However, Rule 315(a) provides the following considerations:

- The general importance of the question presented;
- The existence of a conflict between the decision sought to be reviewed and a decision of the supreme court, or of another division of the appellate court;
- The need for the exercise of the supreme court's supervisory authority; and
- The final or interlocutory character of the judgment sought to be reviewed.

Workers' Compensation Cases Require A Different Procedure

For workers' compensation cases, the party seeking possible supreme court review must first petition the Illinois Appellate Court, Workers' Compensation Commission Division, and request that two or more judges of that panel join in a statement that the case in question involves a substantial question which warrants consideration by the supreme court. Such a motion may be filed as a prayer for alternative relief in a Rule 367 petition for rehearing or as a stand-alone motion, but must, in any event, be filed within the 21 days allowed for requesting rehearing.

The Timing of a Rule 315 (a) Petition for Leave to Appeal

Generally speaking, a 315(a) Petition is due within 35 days of the appellate court's decision or after the appellate court's denial of a Rule 367 petition for rehearing. However, slightly different rules exist depending on whether the case was decided by a published decision or a Rule 23 order. As far as published decisions, absent a timely-filed petition for rehearing, a party seeking leave to appeal must file the petition for leave in the supreme court within 35 days after the entry of such judgment.

Rehearing Petition Filed and Denied

If a timely petition for rehearing is filed, the party seeking review must file the petition for leave to appeal within 35 days after the entry of the order denying the petition for rehearing.

Rehearing Petition Granted

Where a petition for rehearing is granted, the petition for leave to appeal must be filed within 35 days of the entry of the judgment on rehearing.

The rules provide that the supreme court, or a judge thereof, may, on motion, extend the time for petitioning for leave to appeal. However, such motions are not favored and will be allowed only in the most extreme and compelling circumstances. As such, motions to extend are not recommended.

Effect of A Rule 23 Order

If the appellate court renders a Rule 23 Order, the time for filing a petition for leave to appeal a Rule 23 order shall be the same as for published opinions, *except that* if the party who prevailed on an issue in the appellate court timely files a motion to publish a Rule 23 order pursuant to Rule 23(f), and if the motion is granted, a nonmoving party may file a petition for leave to appeal within 35 days after the entry of the order granting the motion to publish. The filing of a Rule 23(f) publication motion does not invalidate a previously filed petition for leave to appeal.

The Rule 315(a) Petition

Supreme Court Rule 315(a) sets forth the requirements for the petition for leave to appeal. The pleading must contain, in the following order:

(1) A prayer for leave to appeal;
(2) A statement of the date upon which the judgment was entered; whether a petition for rehearing was filed and, if so, the date of the denial of the petition or the date of the judgment on rehearing;
(3) A statement of the points relied upon in asking the supreme court to review the judgment of the appellate court;
(4) A fair and accurate statement of the facts, which shall contain the facts necessary to an understanding of the case, without argument or comment, with appropriate references to the pages of the record on appeal;
(5) A short argument (including appropriate authorities) stating why review by the supreme court is warranted and why the decision of the appellate court should be reversed or modified; and
(6) An appendix, including a copy of the opinion/order of the appellate court and any documents from the record which are necessary to the consideration of the petition.

The Rule 315(a) petition is to be prepared, duplicated, served and filed in accordance with the requirements for briefs, as set forth in Rules 341 through 343. The petition is limited to 20 pages, excluding only the appendix.

Examining these requirements in greater detail, the “prayer for leave to appeal” is just that – a request to the court for the relief desired. It is typically found in the introduction to the petition, and asks the court to accept the petition and to rule on the issue(s) presented. A small introduction can precede this prayer with a very short summary of the grounds justifying acceptance. It is here that you should indicate to the Court whether a petition for rehearing was filed and, if so, its disposition.

The “statement of facts” is self-explanatory, although a word of caution is warranted: keep the statement short and limited to only those facts that relate to the issues presented. Also, remember to make appropriate citation reference to the record on appeal and the appendix.

The crux of the Rule 315(a) petition is found in two sections: a statement of the points relied upon in asking the supreme court to review the judgment of the appellate court, and a short argument stating why review by the court is warranted and why the decision of the appellate court should be reversed or modified. The "statement of points relied upon" section should be the portion of the petition where you outline for the court how your case falls within the four points set forth in Rule 315(a) – especially (1) the general importance of the question presented; and (2) the existence of a conflict between the decision sought to be reviewed and a decision of the supreme court, or of another division of the appellate court. Indeed, this is the section where we find statements such as, "the appellate court's ruling stands in direct conflict with prior rulings of the X and Y districts, and requires resolution by this court"

The "argument" section should briefly explain the reasons why the appellate court decision is incorrect. Here, you should highlight the significant points, being careful to preserve all relevant issues.

The Answer

The respondent need not but may file an answer. However, when filed, the answer should set forth reasons why the petition should not be granted; for example, why the case does not meet the suggested criteria set forth is Rule 315(a); or, where appropriate, note that the appellate ruling is interlocutory, that the issue raised was waived, or that the petition itself was untimely. It some cases, it might also be appropriate to point out that the petitioner has misstated the issue or that the dispute is truly one of fact and, therefore, inappropriate for supreme court consideration. In other cases, explain to the court why a conflict does not exist among the appellate courts or that the dispute is, in reality, confined to the parties. Like the petition itself, the answer is limited to 20 pages, excluding the appendix. No reply to the answer is permitted.

What Happens When the Petition Is Allowed?

If leave to appeal is allowed, the appellant may allow his or her petition for leave to appeal to stand as the brief of appellant, or may file a brief in lieu of or supplemental thereto. There are valid reasons for the party seeking supreme court review to desire a full brief to explain the issues. As discussed above, the Rule 315(a) petition has a different focus and should not devote much time to the actual merits of the dispute. Filing a separate brief, which is governed by less restrictive page limitations, provides the opportunity to further develop the facts and supporting argument for the court.

The decision to stand on the petition or to file a further brief must be made within 14 days after the date on which leave to appeal was allowed, and is accomplished by the appellant serving on all counsel of record a notice of election to allow the petition for leave to appeal to stand as the brief of appellant. A similar provision exists for the appellee. The precise rules for this procedure are set forth in Rule 315(h) and should be consulted.

Situations may arise where the party opposing the Rule 315(a) petition for leave to appeal nevertheless has an issue to address once the petition is allowed. In that event, the brief of appellee should be captioned, "*Brief of Appellee. Cross-Relief Requested*," and should contain arguments in support of cross-relief. In turn, the appellant's arguments in opposition to such cross-relief are to be included in the reply brief and the appellee may file a reply brief confined strictly to those arguments.

Parting Thoughts

A question often asked is: "Does the presence of an *amicus* brief help my chances in obtaining supreme court review?" Unfortunately, no statistics are available for the Illinois Supreme Court. However, as noted in an article discussing Petitions for *Certiorari* in the United States Supreme Court, at least one study conducted in 2005 noted "the filing of at least one *amicus* brief in support of a paid petition increased the likelihood that the Court would grant *certiorari* by almost 20 percent, and the filing of at least four *amicus* briefs increased the

likelihood of a grant to 56 percent." Bishop, Timothy S., Jeffrey W. Sarles, and Stephen J. Kane, *Tips on Petitioning for and Opposing Certiorari in the U.S. Supreme Court*, Vol. 34, No. 2, LITIGATION MAGAZINE (ABA 2008). Again, no statistics are available for Illinois, but one can surmise that the filing of an *amicus* raises the stature of the petition and enhances its chances of being allowed.

In any event, drafting a successful Rule 315(a) petition is a demanding process and often one for which relief will not follow. Hopefully, some of the pointers herein will help you draft a more convincing petition and capture the court's attention. Remember, draft eye-catching and substantive issue statements, show that your case involves an important issue that only the supreme court can resolve, and demonstrate in concrete terms that the resolution of your issue would impact the rights and liabilities of people throughout the State. Cases that involve only the narrow interests of the parties are unlikely to make the cut.

About the Author

Brad A. Elward is a partner in the Peoria office of *Heyl, Royster, Voelker & Allen*. He practices in the area of appellate law, with a sub-concentration in workers' compensation appeals and asbestos-related appeals. He received his undergraduate degree from the University of Illinois, Champaign-Urbana, in 1986 and his law degree from Southern Illinois University School of Law in 1989. Mr. Elward is a member of the Illinois Appellate Lawyers Association, the Illinois State, Peoria County, and American Bar Associations, and a member of the ISBA Workers' Compensation Section Counsel.

About the IDC

The Illinois Association Defense Trial Counsel (IDC) is the premier association of attorneys in Illinois who devote a substantial portion their practice to the representation of business, corporate, insurance, professional and other individual defendants in civil litigation.
For more information on the IDC, visit us on the web at **www.iadtc.org**.

Illinois Association of Defense Trial Counsel, PO Box 3144, Springfield, IL 62708-3144, 217-585-0991, idc@iadtc.org