SURVEY OF ILLINOIS LAW: APPELLATE LAW AND PRACTICE

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Appellate law and practice in the Illinois state courts has recently changed significantly. Illinois Supreme Court rules have been extensively modified, either implementing or related to e-filing, and there are new procedures not necessarily detailed in the rules but found in orders and other documents posted online.

Lawyers who practice in the federal courts have long been accustomed to e-filing. A survey conducted by the National Conference of Appellate Court Clerks published in 2010 found that e-filing had been implemented in every federal district court, and in "several" federal courts of appeal.[1] Today, e-filing is required in every federal court of appeals.[2]

As of 2010, only 15 states had implemented appellate e-filing systems of any kind.[3] However, e-filing is rapidly becoming the norm in the state courts; 45 states and the District of Columbia now have some form of e-filing or are on the verge of adopting it,[4] and most of these have, or are planning to have, e-filing at the appellate level. E-filing was adopted in the United States Supreme Court in November 2017.[5]

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1. David Schanker, *E-Fililng in State Appellate Courts: An Appraisal*, NAT'L CONF. OF APP. COURT CLERKS (FEB. 5, 2010), http://cdm16501.contentdm.oclc.org/cdm/ref/collection/appellate/id/189.
2. *E-Filing Rules*, ECF USER MANUAL (Nov. 2012), http://www.ilsd.uscourts.gov/documents/ECFRules.pdf.
3. Schanker, *supra* note 1.
4. NAT'L CTR. FOR ST. CTS., http://www.ncsc.org/topics/technology/electronic-filing/state-links.aspx (last visited Apr. 22, 2018).
5. SUP. CT. OF THE U.S., https://www.supremecourt.gov/filingandrules/electronicfiling.aspx (last visited Apr. 22, 2018).

At the appellate level (state and federal), even if e-filing is required, most courts also require supplementing the e-filed briefs with paper copies, although fewer copies than were required before e-filing. But now, in the Illinois appellate and supreme courts, it is no longer possible to avoid e-filing, e-service, and familiarity with the other rules and procedures integral to the new electronic age.[6]

I. E-FILING AND SERVICE

A. Registration

Before one can e-file any document, the attorney or firm (or self-represented litigant) must register with an electronic filing service provider (EFSP).[7] Several EFSPs are available.[8] The details of the registration process, and how to file using the chosen provider, are beyond the scope of this article but are readily available through online filer training, continuing education courses, and bar journal articles.[9]

B. E-Documents

1. Form

Under the Illinois Supreme Court rules, there is no longer any such thing as a "paper." Everything filed or served is a "document,"[10] because when it is e-filed or e-served, it must be in the approved digital (i.e., PDF) form.[11] Note that under the standards, PDF documents must be searchable — that is, optical character recognition (OCR) must be embedded in the PDF. "When possible, the OCR PDF document should be created directly from the program creating that document, rather than from a scanned image of the

6. Disclaimer: The information in this article describing electronic documents, filing, and related procedures was current, we believe, when written. However, the digital transition is moving rapidly. Much of it is occurring without rule changes, and the online information may not always be up-to-date. The most current information can always be obtained by telephoning the clerk's office of the relevant court.
7. ODYSSEY EFILEIL, http://efile.illinoiscourts.gov/index.htm (last visited Apr. 22, 2018).
8. *Id.*
9. *See* LAW. TR. FUND OF ILL., https://www.isba.org/practicehq/manage/efiling (last visited Apr. 22, 2018).
10. ILL. SUP. CT. R. 2, 131.
11. ILL. SUP. CT. R. 9, 10; "Documents filed electronically must conform to the technical specifications contained in the eFileIL Electronic Document Standards (as published at http://efile.illinoiscourts.gov)." *See eFileIL Electronic Document Standards*, ILL. CTS., http://efile.illinoiscourts.gov/documents/eFileIL_Digital-Media-Standards.pdf (last visited Apr. 22, 2018).

document."[12] This is easily accomplished within most word-processing applications simply by "printing" the document into a PDF-formatted file.

On the first page of each e-filed document, the top margin is supposed to be two inches.[13] This is to allow the clerk to insert an electronic file-stamp at the top of the page. Note that there are special rules for captions and briefing in accelerated appeals.[14]

E-filing and service require that the attorney (or perhaps a staff member, or both) be well-qualified to create and edit PDF documents.[15] Note that an attorney *must* include on an appearance and any other document filed in court "an e-mail address to which documents and notices will be served in conformance with Rule 131(d)."[16]

The Illinois Supreme Court's *Electronic Filing Procedures and User Manual* contains further requirements for e-filed documents. Although this manual is primarily directed to documents filed in the supreme court, the formatting requirements are applicable to documents e-filed in any court.[17]

2. Timeliness

Sometimes a document must be filed on or before a specific day. One of e-filing's advantages is that "a document is considered timely filed if submitted before midnight (in the court's time zone) on or before the date on which the document is due."[18] It should be noted that this rule only applies on a day on which the clerk's office is open. "A document submitted on a day when the clerk's office is not open for business will, unless rejected, be stamped as filed on the next day the clerk's office is open for business."[19] Although a document's due date (if there is one) will rarely fall on a court holiday, the filing date may be important because it may start the running of subsequent due dates of other documents.

If a document is untimely due to a technical failure of a court-approved electronic filing system, or if the document is rejected by the clerk (for

12. *eFileIL Electronic Document Standards*, *supra* note 11.
13. *Id*.
14. ILL. SUP. CT. R. 311, 315. The briefing schedule and other rules for expedited cases are set forth in Rules 311(a) and 315(h)-(j). Local appellate court rules must also be consulted when the case is in the appellate court.
15. "PDF" stands for "portable document format," a file format developed by Adobe Systems, which has become a default standard. PDF documents can include text and images, and are independent of application software, hardware, and operating systems. Although essentially a graphic document, any text in it can be made searchable, just like a word processing file.
16. ILL. SUP. CT. R. 11(b).
17. *Supreme Court of Illinois Electronic Filing Procedures and User Manual*, ILL. CTS., http://www.illinoiscourts.gov/EBusiness/Sup_Ct_Efiling/SCt_efiling_user_manual.pdf (updated Nov. 13, 2017).
18. ILL. SUP. CT. R. 9(d).
19. *Id*.

example, due to some mistake or omission in the document or in the filing procedure), "the filing party may seek appropriate relief from the court, upon good cause shown."[20] Normally, this would be done by motion, and most likely relief will be freely granted. However, to avoid having to spend time worrying or seeking relief, one should e-file time-specific documents before the last minute so that a glitch or mistake can be corrected before the due date expires.

In certain situations, it may be possible to correct some errors or omissions simply by resubmitting the corrected document, even if the revised document will be re-sent after the due date. Check with the reviewing court clerk.

3. Service

Under the current versions of Rules 11 and 12, with rare exceptions, all documents must be served electronically.[21] Some electronic filing service providers will serve any document filed through their service, and under Rule 11, this is the preferred method. To use this method, the filer must provide (online) the names and email addresses of all those to be served. In the alternative, a document can be e-served by attaching to an email, or by providing a link in the body of the email that will allow the recipient to download the document "through a reliable service provider."[22]

Under Rule 131(d), all documents filed or served by a lawyer must bear the attorney's name, business address, e-mail address, and telephone number.[23] "The attorney *must* designate a primary e-mail address and may designate no more than two secondary e-mail addresses" (emphasis added).[24] This means no paper copies of *any* documents (including briefs, petitions, and the like) need be served on the other parties or their attorneys, absent exceptions for self-represented parties and certain extraordinary situations.[25]

Proof of e-service must be in accordance with Rule 12(b).[26] As to proof of service in documents filed in the supreme court, the supreme court's user

20. ILL. SUP. CT. R. 10(d).
21. ILL. SUP. CT. R. 11(c).
22. ILL. SUP. CT. R. 11(c), (e) ("If a party serving a document via e-mail receives learns that the transmission was not successful, the party must make a good-faith effort to alert the intended recipient of a potential transmission problem and take reasonable steps to ensure actual service of the document.").
23. ILL. SUP. CT. R. 131(d).
24. *Id.*
25. ILL. SUP. CT. R. 11(c).
26. ILL. SUP. CT. R. 12(b).

manual must be consulted.[27] E-service is complete on the day of transmission.[28]

C. Notice of Appeal

1. Civil Cases

Appeals from final orders in civil cases are started by filing a notice of appeal in the circuit court.[29] Under the current rules, with rare exceptions,[30] all documents in civil cases must be electronically filed with the clerk of court using an approved electronic filing system.[31] In most counties, this is accomplished through the centralized EFM (eFileIL), but 15 counties are still using other e-file systems which are grandfathered in until July 1, 2018 (and perhaps later, if they cannot transition in time).[32]

The notice of appeal is a "document." By order of the Illinois Supreme Court, e-filing in the circuit courts was to be mandatory as to January 1, 2018.[33] As of this writing, however, e-filing has not been fully implemented in all circuit courts,[34] and some circuit courts may not allow e-filing of notices of appeal even if other documents can be e-filed. Therefore, before e-filing a notice of appeal, the attorney should telephone the circuit clerk's office to determine the procedure for filing this document.

So far as the notice of appeal is concerned, appeals under Rule 304(a) or 304(b) are treated the same as appeals under Rule 301-303. The same is true of an interlocutory appeal under Rule 307.

2. Criminal Cases[35]

In a criminal case, Rule 606(d) governs the notice of appeal.[36] E-filing is not yet mandatory in criminal cases,[37] but some counties allow e-filing of

27. *Supreme Court of Illinois Electronic Filing Procedures and User Manual*, *supra* note 17.
28. ILL. SUP. CT. R. 12(c).
29. ILL. SUP. CT. R. 301, 303.
30. *See* ILL. SUP. CT. R. 9(c) (listing exemptions for electronic filing).
31. ILL. SUP. CT. R. 9(a).
32. *Statewide E-Filing*, ILL. CTS., *http*://www.illinoiscourts.gov/EBusiness/Electronic_Filing.asp. (last accessed Apr. 5, 2018).
33. Supreme Court Order M.R. 18368, In re: Mandatory Electronic Filing in Civil Cases, (Jan. 22, 2016), http://www.illinoiscourts.gov/SupremeCourt/Announce/2016/012216.pdf.
34. *E-Filing for Illinois Courts: Active Courts*, ILL. CTS., http://efile.illinoiscourts.gov/active-courts.htm (last accessed Apr. 5, 2018).
35. Including quasi-criminal and juvenile cases.
36. ILL. SUP. CT. R. 606(d).
37. Ill. Sup. Ct. M.R. 18368 (eff. May 30, 2017); *see also* ILL. SUP. CT. R. 9.

the notice of appeal and other documents.[38] Because this transition is ongoing, practitioners should contact the circuit clerk's office to determine whether a given notice of appeal may be, or is required to be, e-filed in a criminal, quasi-criminal, or juvenile case.

D. Other Documents

1. Appeals under Rules 306 and 308

In appeals of interlocutory orders under Rules 306 and 308, no notice of appeal is filed.[39] Instead, to obtain leave to appeal, one must file a petition (Rule 306)[40] or an application (Rule 308).[41] Under Rule 9, these documents and supporting records must be e-filed.[42] In addition to e-filing, paper copies of these petitions or applications may also be required by the appellate court.[43] Before e-filing, practitioners should confirm the filing requirements with the clerk of the appellate court.

Obviously, any answers, replies, or other permitted documents must also be e-filed.[44] Similarly, supporting records needed for appeals under Rule 307 also must be e-filed.[45]

2. Direct Review of Administrative Orders by the Appellate Court

Petitions for direct review by the appellate court of administrative orders, and all other documents in support or opposition, must meet the new e-filing and e-document requirements.[46]

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38. *See, e.g.*, JACKSON COUNTY CIR. CLERK, http://circuitclerk.co.jackson.il.us/ (last visited Mar. 31, 2018) (stating that "Jackson County has chosen [to require e-filing] for all criminal cases . . . .").
39. ILL. SUP. CT. R. 306(a) ("A party may petition for leave to appeal . . . ."); ILL. SUP. CT. R. 308(b) ("The appeal will be sought by filing an application for leave to appeal . . . ."); *see also* Talbert & Mallon, P.C. v. Stokes Towing Co., 213 Ill. App. 3d 992, 996, 572 N.E.2d 1214, 1217 (1991) (stating that a notice of appeal is not necessary for interlocutory appeals filed under Rule 306).
40. ILL. SUP. CT. R. 306(a) ("A party may petition for leave to appeal . . . .").
41. ILL. SUP. CT. R. 308(b) ("The appeal will be sought by filing an application for leave to appeal . . . .").
42. ILL. SUP. CT. R. 9(a) (unless specifically exempt, "all documents in civil cases shall be electronically filed . . . .").
43. For example, Rule 341 allows the appellate courts to require parties to file duplicate paper copies of briefs. ILL. SUP. CT. R. 341(e). Thus, Illinois appellate courts may have similar requirements for petitions or applications.
44. ILL. SUP. CT. R. 9.
45. *Id.;* ILL. SUP. CT. R. 307(a), (d).
46. *See* ILL. SUP. CT. R. 335.

3. Docketing Statements, Motions, etc.

Needless to say, all other documents filed in any reviewing court—the docketing statement, motions, objections, memoranda, supporting records, whatever—must now be e-filed, absent some pre-determined exception.[47] As to these documents, no paper copy need be filed.[48] Contrary to the practice in federal courts, an e-filed motion must have a proposed order attached.[49]

"[S]upporting records [must] conform to the requirements of Rule 324 and the Standards and Requirements for Electronic Filing the Record on Appeal."[50]

Slightly different procedures apply to the filing of briefs and similar documents, which will be discussed below.

II. BRIEFS

All briefs and similar documents (e.g., petitions for leave to appeal) must now be e-filed, but the form and content requirements remain the same as for their paper counterparts.[51] The electronically filed copy is considered the official original.[52] Note that the requirements for the color of the cover also apply to e-filed briefs.[53] However, technology does not make this a simple process. Although a PDF copy can be produced from the word processing application simply by saving the document as a PDF or "printing" it to a PDF file (these are the preferred methods), changing the color of the cover must be accomplished separately from the word processing application in a computer application that permits the editing of PDF files. While there may be other programs that offer this feature, the most commonly used application for this purpose is Adobe Acrobat.[54]

The brief's appendix must also be included in the same PDF document, unless the combined brief and appendix file would be larger than 150

47. ILL. SUP. CT. R. 9.
48. *Id.*
49. ILL. SUP. CT. R. 361(b)(2) ("No motion shall be accepted by the clerk unless accompanied by such a proposed order.").
50. ILL. SUP. CT. R. 328.
51. ILL. SUP. CT. R. 9, 10, 341, 342; *see also Mandatory Electronic Filing for Civil Cases*, ILL. CTS., http://efile.illinoiscourts.gov (last visited Mar. 31, 2018).
52. ILL. SUP. CT. R. 341(e).
53. ILL. SUP. CT. R. 341(d). ("The colors of the covers of the documents, whether electronic or paper, shall be: appellant's brief or petition, white; appellee's brief or answer, light blue; appellant's reply brief, light yellow; reply brief of appellee, light red; petition for rehearing, light green; answer to petition for rehearing, tan; and reply on rehearing, orange.").
54. Sam Glover, *4 Alternatives to Adobe Acrobat*, LAWYERIST (Mar. 24, 2014), https://lawyerist.com/alternatives-acrobat/ (noting that "Adobe Acrobat is the definitive PDF-editing software.").

megabytes.[55] In that case, the appendix should be placed in a separate PDF document and labeled "Separate Appendix."[56]

References to the record on appeal must be in the format as set forth in the Standards and Requirements for Electronic Filing the Record on Appeal.[57]

The length of briefs is still limited, but now can be measured in either pages or number of words.[58] The word-count method is preferred, and it has the additional benefit of permitting the use of typefaces and sizes that are easier for the court to read than the traditional Times 12-point, which should never be used. A good source for typography information is the U.S. Court of Appeals for the Seventh Circuit's monograph, *Requirements and Suggestions for Typography in Briefs and Other Papers*, available online at the Seventh Circuit's website.[59]

Although briefs must be e-filed, all districts of the appellate court still require the filing of a certain number of paper copies, either in all cases or in certain types of cases. For example, in the first district, six paper copies of electronically filed briefs and appendices must be filed.[60] The paper copies must be the printed version of the e-filed document and bear the court's electronic file stamp. This means that the printed brief can be prepared only after the electronic brief has been filed and accepted, and the file-stamped copy downloaded via the e-file system. The second, third, and fifth districts require five paper copies, using a similar procedure.[61] In the fourth district, no paper copies need be filed except in workers' compensation appeals.[62] In Workers' Compensation Commission Division appeals, regardless of the district, ten paper copies are required.[63]

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55. ILL. SUP. CT. R. 342.
56. *Id*.
57. ILL. SUP. CT. R. 341(h)(6) (eff. Nov. 1, 2017).
58. ILL. SUP. CT. R. 341(b)(1) (eff. Nov. 1, 2017). (The commonly-used word processing programs all have the ability to count the words in a document. The word count specified in Rule 341 does not include certain preliminary pages, so it will be necessary to copy the document into a separate file, sans the preliminary pages, to get an accurate count).
59. *Requirements and Suggestions for Typography in Briefs and Other Papers*, U.S. CT. OF APP. FOR THE SEVENTH CIR., http://www.ca7.uscourts.gov/forms/type.pdf (last visited Apr. 20, 2018).
60. Ill. App. Ct., First Dist., R. 39 (July 1, 2008); *1st District Adds E-filing Rule for Paper Copies*, CHI. DAILY L. BULL. (Feb. 14, 2018), http://www.chicagolawbulletin.com/archives/2018/02/14/e-filing-new-paper-copy-rule-2-14-18. (The First District emphasized that Rule 39 is temporary, "until everyone is trained and more comfortable with using the computer to do everything." The same is undoubtedly true for the other districts as well).
61. Ill. App. Ct., Second Dist. R. 101 (July 1, 2017); Third Dist. App. Ct. Admin. Order 72 (Sept. 28, 2017), http://www.illinoiscourts.gov/AppellateCourt/LocalRules/3rd.pdf; Fifth Dist. App. Ct. Admin. Order (Nov. 14, 2017), http://www.illinoiscourts.gov/AppellateCourt/LocalRules/5th.pdf.
62. *See* Administrative & Procedural Rules of the Illinois Appellate Court–Fourth District. The Fourth District rules contain valuable e-filing details applicable to e-briefs in all appellate court districts.
63. *In the Appellate Court of Illinois Worker's Compensation Division, Administrative Order*, ILL. CTS. (Sept. 12, 2017), http://www.illinoiscourts.gov/AppellateCourt/LocalRules/WorkersComp_AdminOrder.pdf.

Where required, the paper copies must be "filed" within five days of the electronic notification generated upon acceptance of the electronically filed document.[64] As to these copies, does the mailbox rule apply? The Illinois Supreme Court's manual states that the paper copies must be "received" in the clerk's office within that five days.[65] Several of the appellate court local rules use this same language.[66] Whether this deadline will be strictly enforced remains to be seen.[67]

III. FILING IN THE ILLINOIS SUPREME COURT

For some time prior to July 1, 2017, it was possible (but not required) to e-file petitions for leave to appeal (and answers) and briefs in the Illinois Supreme Court. As of today, e-filing of these and all other documents in the supreme court is mandatory.[68]

The Illinois Supreme Court's e-filing procedure is detailed in a user manual.[69] The procedure is similar to that of the appellate court; but, just as in the appellate court, parties must still file paper copies of briefs, petitions, and answers, although a fewer number than before.[70] Once the e-brief has been filed and accepted by the supreme court, the clerk will insert an electronic file stamp.[71] The file-stamped copy must then be downloaded, and 13 copies printed and "filed" by mail.[72] Paper copies need not be served on

64. *Supra* note 25; *supra* note 48–51; ILL. SUP. CT. R. 341(e) (eff. Mar. 1, 1982) (technically, the paper copies are not being "filed," because the electronically filed brief is the only one actually filed).

65. *Supreme Court of Illinois Electronic Filing Procedures and User Manual*, *supra* note 17; ILL. SUP. CT. R. 373 (eff. July 1, 2017) ("If received after the due date, the time of mailing by an incarcerated, self-represented litigant shall be deemed the time of the filing.").

66. *Rules of the Illinois Appellate Court, Second District*, ILL. CTS. (Mar. 6, 2018) http://www.illinoiscourts.gov/AppellateCourt/LocalRules/2nd.pdf; *Administrative and Procedural Rules of the Illinois Appellate Court, First District*, ILL. CTS. (July 1, 2008), http://www.illinoiscourts.gov/AppellateCourt/LocalRules/1st.pdf; Ill. App. Ct., Second Dist., R. 101 (Jan. 10, 2018); Third Dist. App. Ct. Admin. Order 72 (Sept. 28, 2017), http://www.illinoiscourts.gov/AppellateCourt/LocalRules/3rd.pdf; Fifth Dist. App. Admin. Order (Nov. 14, 2017), http://www.illinoiscourts.gov/AppellateCourt/LocalRules/5th.pdf.

67. It seems likely that the five-day window will be deemed directory and the paper copies will not be rejected as untimely if they arrive very soon after the fifth day. Having said all that, there is no reason why appellate counsel cannot always have the paper copies prepared and mailed so as to be received within that five-day window.

68. *Mandatory Electronic Filing for Civil Cases*, *supra* note 51; *E-Business in the Illinois Judiciary - Supreme Court*, http://www.illinoiscourts.gov/EBusiness/SupCt_Ebusiness.asp (last visited Apr. 4, 2018); ILL. SUP. CT. R. 9.

69. *Supreme Court of Illinois Electronic Filing Procedures and User Manual*, *supra* note 17.

70. *Id.*

71. *Id.*

72. *Id.*

other parties to the appeal.[73] When documents are e-filed in the supreme court, the proof of service must so state.[74]

Motion practice in the Illinois Supreme Court is similar in most respects to that in the appellate court, except as follows: The filing procedure depends on whether the motion can be granted by a single justice or requires action by the full court.[75] If the relief sought can be granted "by the court or a justice thereof" (that is, routine motions, such as for an extension of time), the motion should be directed to only one justice. If the case arises from the second, third, fourth, or fifth district, it should be addressed to the justice from that district and filed with the supreme court clerk's office in Springfield. The clerk then directs the motion to the justice of the appropriate judicial district. (Formerly, the movant sent the motion directly to the downstate justice's home office. That practice is now obsolete.) If the case is from Cook County, the clerk directs the motion to the first district supreme court justice designated to hear motions. When in doubt as to whether action by a single justice is authorized, ask the supreme court clerk's office for guidance.

If the motion requires action by the full court, it is simply filed in the usual manner.[76]

IV. THE NEW FORM OF THE RECORD ON APPEAL

Illinois is transitioning to records on appeal in electronic (PDF) form. In civil cases, e-filing in the circuit court is now required; in some courts, it is also available in criminal cases.[77] This means that in such cases, when documents filed in the trial court are compiled into the record on appeal, the common law record will already be in digital form. In the dwindling number of cases where the common law record is still in paper form, in preparing the record on appeal, the circuit clerk will scan the documents into a PDF file or files.

Court reporting personnel are now required to file trial transcripts—the "report of proceedings"—in searchable PDF form,[78] and thus are made part of the record on appeal in this format. Trial exhibits offered by any party may already be part of the common law record, and if so they are already in

73. *Id.*
74. *Id*.
75. ILL. SUP. CT. R. 361.
76. ILL. SUP. CT. R. 362(c)(2).
77. For a county-by-county map showing the status of e-filing, *see* http://www.illinoiscourts.gov/EBusiness/EBus_Map/EBus_Statewide_Map.asp. Note, however, that implementation is a moving target, and one should not assume that the map is up-to-date. Counsel should telephone the circuit or appellate court's clerk for the latest information.
78. ILL. SUP. CT. R. 323(b) (amended 2017).

digital form; those that are not should be made part of the record on appeal in PDF format, searchable if possible.[79]

In 2016, the Illinois Supreme Court set a series of deadlines for implementing e-filing in all Illinois courts.[80]

The January 22, 2016 order required e-filing through a single, centralized electronic filing manager (EFM), called eFileIL, mandated dates for the implementation of eFileIL, and included integration with each court's case management system. Effective January 1, 2018, civil e-filing in Illinois trial courts will be mandatory, with eFileIL currently implemented in the supreme court, appellate court, and 93 trial courts.[81]

As of this date, as to civil cases, all but a handful of circuit courts have completed the transition; a few have been granted extensions.[82] In Cook County, the County Division failed to make the deadline, necessitating an extension. Cook was one of seven counties to request an extension.[83]

Prior to the supreme court's 2016 order, certain counties had already implemented e-filing using various stand-alone systems.[84] Illinois is now moving to a uniform system called eFileIL.[85] The supreme court has ordered that by no later than July 1, 2018, all circuit courts with stand-alone e-filing systems must complete migration from their stand-alone systems to eFileIL.[86] This will not only create uniformity in the filing procedures; it will also enable the Illinois court system to encompass all records in a uniform case management system.

The 87 counties that didn't previously have e-filing as an option for lawyers were given until Jan. 1, 2018, to get Tyler Technologies' eFileIL in place. The 15 counties that had e-filing in some capacity were given until July 1 to get eFileIL in place, provided they had some form of digital filing system up and running in every area of the court by January 1.[87]

The new e-filing systems and procedures require that the record on appeal be prepared in a uniform format. Under the authority of its 2016 order, the supreme court has promulgated a 16-page document, *Standards and Requirements for Electronic Filing the Record on Appeal*.[88] The standards contain detailed instructions as to the contents, preparation, and

79. *See* ILL. SUP. CT. R. 321 (amended 1993); ILL. SUP. CT. R. 324 (amended 2017).
80. Ill. Sup. Ct. Admin. Order, M.R. No. 18368 (amended 2017), www.illinoiscourts.gov/SupremeCourt/Announce/2016/012216.pdf.
81. *E-Filing for Illinois*, ILL. CTS., http://efile.illinoiscourts.gov (last visited Apr. 6, 2018).
82. *Active Courts*, *supra* note 34.
83. *Id.*; Jordyn Reiland, *Circuit Clerk Brown: Case Management System on Time*, CHI. DAILY L. BULL. (Mar. 16, 2018), http://www.chicagolawbulletin.com/home.
84. *Statewide E-Filing*, *supra* note 32.
85. *Id*.
86. *Id*.
87. Reiland, *supra* note 83.
88. *Standards and Requirements for Electronic Filing the Record on Appeal*, ILL. CTS. (2018), http://efile.illinoiscourts.gov/documents/IL-Record-on-Appeal-Standards-v1.2.pdf.

format of the digital record on appeal. Its subjects include general provisions; the common law record section; the report of proceedings section; the exhibits section; a supplement to the record section; the method of assembling the record on appeal; how to number the pages within each section; transmission of the record; and sample documents for such things as certifications and tables of contents.

Although the *Standards* document will be of interest primarily to the circuit clerks, appellate counsel should review it to become familiar with the format of the digital record on appeal, and to learn the proper format for citations to the record in briefs.

The digital record on appeal will be available to appellate counsel in one of two ways. The Illinois court system is now transitioning to a statewide remote access system called re:SearchIL.[89] This will be a web-based online docket, similar to that now used in the federal courts of appeals, providing access to information about each case on appeal, including a list of all filings. "re:SearchIL is currently in a gradual roll-out to judges, clerks, and attorneys across the state."[90] When activated, attorneys can access the system using their eFileIL registration.[91]

The record on appeal will be available online to the attorneys who have appeared in the case through a web link provided by the appellate court's clerk. Appellate counsel can then use the record online or can download all or any parts they wish to their own computers for use locally.

The Illinois courts website states:

> Consistent with Supreme Court Order M.R. 18368, effective July 1, 2017, all trial court records on appeal will be transmitted using the EFM [Electronic Filing Manager] service to the respective reviewing court. Under the existing pilot projects operating in four districts of the Appellate Court, the official paper court record, pursuant to Supreme Court rules, remains with the Appellate Court Clerk and can be accessed from the Clerk, but a mirror record will be produced electronically with identical pagination. Attorneys who file appearances in the case will receive a password providing access to the record, as well as all the justices in the Appellate Districts operating the pilots and the parties to the appeal. The parties, attorneys for a party, approved court personnel and justices

89. *See Platform for Illinois E-Filing*, ILL. CTS., http://research.illinoiscourts.gov (last visited Apr. 6, 2018).

90. *See* re: SearchIL, https://researchil.tylerhost.net/auth/login?signin=86489baea6db5e2865eb2fadbaa07405 (last visited Apr. 6, 2018).

91. According to the Illinois courts website, re:SearchIL is "live" in certain counties and in the first and third districts of the appellate court for certain civil cases. http://efile.illinoiscourts.gov/active-courts.htm. This could not be confirmed.

> of the Appellate Districts will have the ability to search, bookmark and make notes on their individual copies of the electronic record. Any markings or notations made by a user on the electronic record are secure and are unique to that user's copy. No user will be able to view or access another user's copy. The Appellate District Clerk will retain an unmodified copy of the electronic record at all times. The electronic record is in a format that supports searchable text, both word and phrase. Once a mandate issues in an appellate case from the counties operating under these pilots, access to the electronic record will be terminated.[92]

Until it is available online in re:SearchIL, the appellate court clerks will make the digital record on appeal available to appellate counsel in some other manner.

One of the important benefits of the re:SearchIL system is that the record on appeal will be available to the appellate and supreme court justices at all times. They can read the record and check record cites whenever they are working on the case; there will be no need to pass the record around. It also means that the Illinois Supreme Court justices and their clerks can refer to the record at all times, not only when working on an accepted case but also when considering a petition for leave to appeal.

The digitizing of briefs, appendices, and records on appeal also creates interesting possibilities for hyperlinks. Because briefs and appendices are now, in almost all cases, in the same PDF file, citations in the brief to the record can be hyperlinked to documents in the appendix. Perhaps, at some future time, it will even be possible to hyperlink record citations in the brief to the record on appeal itself.

V. RECENT DECISIONS OF NOTE

Decisions of the Illinois supreme and appellate courts often include points of appellate practice and procedure. Of the cases decided in recent months, we have selected eight for comment here.

Rozsavolgyi v. City of Aurora.[93] In this case, a divided Illinois Supreme Court addressed two important rules of appellate practice. The first, Rule 308, allows a party to seek immediate review of an interlocutory order based on the trial court's finding 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

92. *E-Business in the Illinois Judiciary—Circuit Court*, *supra* note 68.

93. Rozsavolgyi v. City of Aurora, 2017 IL 121048.

termination of the litigation."[94] The second, Rule 316, allows an appeal from the appellate court to the supreme court as a matter of right if the appellate court, after deciding the appeal, certifies that the case "involves a question of such importance that it should be decided by the Supreme Court."[95]

Rozsavolgyi, a City of Aurora employee, was fired. She sued, claiming civil rights violations in employment under the Illinois Human Rights Act.

During the trial, three issues arose. The trial court certified three questions for permissive interlocutory review. Under Rule 308, a certified question must be one of law only, and the certification must frame the issue. Once the certification is made, the party seeking review must apply to the appellate court for leave to appeal. In this case, the appellate court granted the city's Rule 308 petition.[96]

A divided panel of the appellate court answered the certified questions.[97] Dissatisfied with the answer to the third question, Rozsavolgyi requested that the appellate court certify that it involved a question of such importance that it should be decided by the Illinois Supreme Court, pursuant to Rule 316.[98] The appellate court granted the Rule 316 certificate of importance, but only as to the third question.[99] The Illinois Department of Human Rights was permitted to intervene as an additional appellant.[100]

Despite the certificate's limitation to the third certified question, the parties asked the supreme court to decide the first and second certified questions, based on the fact that, in a Rule 316 appeal, the whole case and not just a particular issue comes before the supreme court.[101]

The supreme court majority found the whole proceeding replete with errors.[102] In the end, it refused to answer the certified question, or any of the three questions, and vacated the appellate court's judgment.[103]

First, the majority chastised the appellate court for issuing the Rule 316 certification, which mandates that the supreme court hear the appeal.[104] Rule 316 is one of only a few exceptions to the rule that whether a case should be reviewed by the Illinois Supreme Court is a matter to be decided by that court, within its "sound judicial discretion."[105] The supreme court only has time for

94. ILL. SUP. CT. R. 308.
95. ILL. SUP. CT. R. 316.
96. *Rozsavolgyi*, 2017 IL 121048, ¶¶ 1, 6, 7.
97. Rozsavolgyi v. City of Aurora, 2016 IL App (2d) 150493, ¶ 77, 95, 115, *reh'g denied* (July 6, 2016), *vacated*, 2017 IL 121048, ¶ 14; *Rozsavolgyi*, 2017 IL 121048, ¶¶ 7, 8.
98. ILL. SUP. CT. R. 316.
99. *Rozsavolgyi*, 2017 IL 121048, ¶ 9.
100. *Id.* ¶ 1.
101. *Id.* ¶ 13.
102. *Id.* ¶¶ 38-41.
103. *Id.*
104. *Id.* ¶ 34.
105. *Id.* ¶¶ 17-18.

plenary review and disposition by opinion of about 60–80 cases a year.[106] It must also deal with over 2,000 other matters, including petitions for leave to appeal and petitions seeking other remedies.[107] For these reasons, the court prefers to make its own decisions as to which cases to accept from the lower courts.

The majority opinion admonished that "Illinois Supreme Court Rule 316 provides for an exceptional avenue of appeal to this court and should therefore be exercised rarely and only when unequivocally warranted."[108] It quoted appellate court opinions stating that the supreme court "is in a better position than this court to determine whether it should accept [a] case for further review."[109] As the quoted cases explained, "[t]he supreme court faces an expanded number of appeals which arise as a matter of right. We need not infringe upon its exercise of discretion as to how it spends the rest of its limited time."[110] The majority suggested that the preferred way to seek review by the Illinois Supreme Court is by a petition for leave to appeal under Rule 315, in which the court will exercise its discretion by applying the factors specified in the rule.[111] It also suggested that in considering a motion for a certificate of importance under Rule 316, the appellate court should use those same Rule 315 factors in deciding whether to issue the certificate.[112] It summed up by stating that "[s]hould issues again arise upon remand, we remind the parties and the courts below both of the proper process of appeal and of this court's ability to exercise its discretion if and when it deems it necessary to do so."[113]

The three dissenting justices disagreed with the majority's strong implication that it was improper for the appellate court to issue the certificate of importance.[114] The dissent made the significant point that the right to appeal via a certificate of importance is not found only in Rule 316, but also in the Illinois constitution.[115] Article VI, § 4(c) of the Illinois Constitution states: "Appeals from the Appellate Court to the Supreme Court are a matter of right . . . if a division of the Appellate Court certifies that a case decided by it involves a question of such importance that the case should be decided

106. *See* SUPREME COURT OF ILL., 2016 ANNUAL REPORT OF THE ILLINOIS COURTS-STATISTICAL SUMMARY 167 (2017), http://www.illinoiscourts.gov/SupremeCourt/AnnualReport/2016/2016_Statistical_Summary.pdf.
107. *Id.* at 163.
108. *Rozsavolgyi*, 2017 IL 121048, ¶ 18.
109. *Id.* (quoting John Crane, Inc. v. Admiral Ins. Co., 2013 IL App (1st) 1093240-B, ¶ 73).
110. *Id.*
111. *See id.* ¶¶ 17-18.
112. *Id.* ¶ 17.
113. *Id.* ¶ 39.
114. *Id.* ¶¶ 74-79 (Burke, J., dissenting).
115. *Id.* ¶ 76.

by the Supreme Court."[116] As to this issue, the dissent concluded:

> It is not this court's place to prevent future litigants from availing themselves of a right of appeal written into our state constitution. Plaintiff did nothing wrong in seeking a certificate of importance in this case, and the appellate court did not err in granting one.[117]

Next, the majority turned to the question(s) certified under Rule 308. The third certified question, which was the basis for the Rule 316 certification, was (paraphrased): does the Local Governmental and Governmental Employees Tort Immunity Act apply to a civil action under the Illinois Human Rights Act?[118] If yes, should the court modify, reject, or overrule certain prior holdings?[119] The majority concluded that the third certified question was improperly overbroad, and therefore should not have been answered.[120] Answering this question as framed, it said, "would necessarily bear on situations not before th[e] court and would therefore [improperly] result in an advisory opinion."[121] The majority also found the question improper in that it was not shown that there was a "substantial difference of opinion" on the question of law posited.[122] Additionally, it questioned whether answering the question would "materially advance the ultimate termination of the litigation," as the rule requires.[123]

For all these reasons, the supreme court majority declined to answer the third certified question.[124] It then reiterated that appellate review of interlocutory orders is not favored, that Rule 316 should be seldom used, and that the preferred method of review is under Rule 315, not Rule 316.[125] "Rule 315 is the procedural avenue that should be followed where, as here, a litigant seeks review of an appellate court's ruling on a certified question under Rule 308. It is the avenue we urge litigants to follow in future cases such as this one."[126]

Finally, despite acknowledging that in an appeal under Rule 316 the whole case comes before the supreme court and not only a particular issue,[127] the majority declined to consider the other certified questions.[128] "Because

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116. ILL. CONST. art. VI, § 4(c).
117. *Rozsavolgyi*, 2017 IL 121048, ¶ 79 (Burke, J., dissenting).
118. *Id.* ¶ 25 (majority opinion).
119. *Id.*
120. *Id.* ¶ 26.
121. *Id.*
122. *Id.* ¶ 32.
123. *Id.* ¶ 33.
124. *Id.* ¶ 34.
125. *Id.*
126. *Id.* ¶ 38.
127. *Id.* ¶ 13 (quoting Hubble v. Bi-State Dev. Agency, 238 Ill. 2d 262, 267 (2010)).
128. *Id.* ¶ 41.; ILL. SUP. CT. R. 318(a); Hubble v. Bi-State Dev. Agency, 238 Ill. 2d 262, 267 (2010).

the appellate court granted a certificate of importance and the whole case is now before this court does not mean that this court will address issues that should not be before it at this time or in this manner."[129]

The three dissenting justices strongly disagreed.[130] The dissent deplored the majority's disposition.[131] Despite the case being before the court "as a matter of right, the majority ch[ose] not to address the merits of any of the certified questions."[132] "Thus, after more than two years of litigation and the expenditure of an undoubtedly large amount of legal fees, the parties are left with nothing. Their dispute is no closer to resolution than it was in 2015."[133]

The dissent first opined that the majority's holding that the third certified question was improper, and that therefore the appellate court abused its discretion in answering the question, was simply incorrect.[134]

> Second, the majority fails to address or even acknowledge the defendant's cross-appeal from the appellate court's judgment regarding the first and second certified questions, even though that cross-appeal is before us as a matter of right. Third, rather than simply vacating that portion of the appellate court judgment regarding the third certified question, the majority vacates the entirety of the appellate court's judgment, even though the majority has just stated it is not reaching the merits of the first and second certified questions. Finally, the majority holds that a litigant may not seek, and our appellate court may not issue, a certificate of importance in a case that involves a certified question under Rule 308, a finding that is absolutely incorrect. Nothing in our rules or, more importantly, our constitution limits the appellate court's authority in this way.[135]

The dissent went on to analyze each issue.[136] It found that the third question was not improper or overly broad; that answering it would materially advance the ultimate termination of the litigation, as required by Rule 308; that answering it would not result in a hypothetical or advisory opinion; that there is actually a basis for the Rule 308 finding that there is a difference of opinion as to the legal issue; and that the question is ideally

129. *Rozsavolgyi*, 2017 IL 121048, ¶ 39.
130. *Id.* ¶¶ 46-81.
131. *Id.*
132. *Id.* ¶ 46.
133. *Id*.
134. *Id.* ¶ 48.
135. *Id.*
136. *Id.* ¶¶ 50-65.

suited for resolution through Rule 308.[137] It noted that, if the phrasing of the question is thought to be too broad, the court could easily reformulate it, as the court has done in prior cases.[138]

Next, the dissent criticized the majority for failing to address the cross-appeal, which concerned the other two certified questions.[139] "[T]he cross-appeal is a part of this case, and this court has no discretion not to consider it."[140] In fact, the dissent noted, "[b]ecause an appeal pursuant to Rule 316 is of the entire case, it is neither necessary nor appropriate for the appellate court to certify a particular question or questions in its order granting a certificate of importance."[141] The certification does not limit the supreme court's scope of review, and therefore it found the majority erred in viewing the appellate court's certification as limited only to the third certified question.[142] "The majority does not find that this court lacks jurisdiction to consider the cross-appeal. Therefore, this court has no discretion to refuse to address the issues raised in the cross-appeal."[143]

The dissent concluded that "[t]he majority exacerbate[ed] its errors . . . by vacating the [entire appellate] court's judgment, including the appellate court's answers to the first and second certified questions," despite the fact that it declined to consider the merits of the certified questions.[144]

> There is no finding by the majority that the appellate court erred in granting review of the first and second questions or that the answers were incorrect. Thus, this court is now vacating a portion of the judgment of the appellate court for no legal reason whatsoever. If the majority believes it is improper for this court to consider the merits of the appellate court's judgment regarding the first and second questions, then the majority should simply let that portion of the appellate court judgment stand.[145]

The significance of this case with respect to the interpretation and use of Rules 308 and 316 is obvious. Reasonable legal minds might differ as to whether the majority or the dissent has the better analysis on any particular issue. Perhaps future supreme courts might see certain issues differently. In the meantime, however, the *Rozsavolgyi* case teaches important lessons for lawyers and judges seeking to employ these rules.

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137. *Id.* ¶¶ 54-61.
138. *Id.* ¶ 62.
139. *Id.* ¶ 67.
140. *Id.*
141. *Id.* ¶ 71 (citing Nowicki v. Union Starch & Refining Co., 54 Ill. 2d 93, 95 (1973)).
142. *Id.*
143. *Id.*
144. *Id.* ¶ 73.
145. *Id.*

First, in drafting a proposed Rule 308 finding, great care must be used: (1) Be sure the question is a pure question of law; (2) draft the question narrowly, so that on its face it controls this case; and (3) in the motion and proposed order, describe in detail the reasons why there is a "substantial ground for difference of opinion" on the issue, and exactly how an immediate appeal will "materially advance the ultimate termination of the litigation."[146]

Note that no matter how the trial court rules substantively on the issue in dispute, if the trial court declines to enter the certification, or if the appellate court denies leave to appeal, the issue is still available for review in an appeal from the final judgment.[147] Note also that, if the appellate court allows leave to appeal and answers the question, even if a party is dissatisfied with the answer, it is not necessary to seek review in the Illinois Supreme Court at that time. The issue is still available in a later appeal under Rule 315.[148]

Second, in those "rare" cases where counsel decides that a certificate of importance should be sought under Rule 316, if the appellate court issues the certificate, counsel should also file a petition for leave to appeal under Rule 315. The *Rozsavolgyi* case suggests that the supreme court can decide that a certificate of importance was improvidently granted.[149] In addition, the appellate court can do the same.[150] Since the supreme court in *Rozsavolgyi* tells us that Rule 315 appeals are preferred, this gives the court the opportunity to take the case under Rule 315 and thereby avoid dealing with Rule 316.[151] It also avoids the catastrophic situation in which a Rule 316 appeal is dismissed (or a certification vacated) and the time has run for filing a petition for leave to appeal under Rule 315.

In another Illinois Supreme Court case that reached the court by way of a certificate of importance, *Johnson v. Ames*,[152] the question was whether a local referendum seeking to impose term limits on the office of village president was invalid because it was vague and ambiguous. Justice Thomas,

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146. ILL. SUP. CT. R. 308(a).

147. Miller v. Consolidated Rail Corp., 173 Ill. 2d 252, 258 (1996) ("Since the promulgation of Rule 306, three decisions of this court have recognized that, for jurisdictional purposes, petitions for leave to appeal may be filed within 30 days of all interlocutory orders denying a motion to dismiss on the basis of *forum non conveniens*.").

148. ILL. SUP. CT. R. 318(b) ("Interlocutory Review. The review of cases at an interlocutory stage is not favored, and a failure to seek review when the Appellate Court's disposition of the case is not final does not constitute a waiver of the right to present any issue in the appropriate court thereafter.").

149. *Rozsavolgyi*, 2017 IL 121048, ¶ 26 (noting that the certified question was "overbroad" and did not warrant review).

150. *Id.* ¶ 23 ("[A]fter allowing permissive interlocutory review, the appellate court at times has vacated its order allowing leave to appeal upon reconsideration of its decision to allow permissive interlocutory review.").

151. *Id.* ¶ 18 ("Illinois Supreme Court Rule 316 provides for an exceptional avenue of appeal to this court and should therefore be exercised rarely and only when unequivocally warranted.").

152. Johnson v. Ames, 2016 IL 121563.

specially concurring, opined that the case was clearly not appropriate for certification under Rule 316.[153] He urged that, in considering whether to certify, the appellate court should be guided by the factors set forth in Rule 315, "thereby reserving the exercise of its certification power only for those rare cases that truly compel an authoritative resolution of statewide impact."[154] He deemed the issue in this case the very opposite of a "question of such importance that the case should be decided by the Supreme Court."[155] What makes this particularly interesting is that Justice Thomas joined the dissent in the *Rozsavolgyi* case.

* * *

There were, as usual, other cases of lesser import that can serve as lessons relearned or reminders.

Offer of proof. *People v. Staake*[156] reaffirms the importance of the offer of proof in preserving an issue for appellate review. Defendant, on trial for murder, theorized that the victim's failure to get timely treatment for his injury was an intervening cause of his death. In support of this theory, he sought to cross-examine the state's medical witness, Dr. Day, and to make this argument during closing. The trial court refused to allow it. The supreme court held this theory was forfeited because the defendant failed to make an offer of proof in chambers, either by examining Dr. Day or calling another witness, to show there was some evidence to support his claim as to causation.[157]

Jurisdiction: Criminal appeals. *People v. Relerford*[158] reminds us that in a criminal case, the reviewing court has no jurisdiction to review unsentenced convictions. There is no final judgment in a criminal case unless and until a sentence has been imposed.[159] So where the defendant was convicted on four counts but sentenced on only one, the appellate court should not have reviewed the merits of the other three counts.

In addition, this is one of those rare cases in which the State can appeal to the supreme court directly from the trial court. Since the trial court held the statute under which the defendant was convicted unconstitutional, the court granted the State's petition for leave to appeal as a matter of right under Rule 317.[160]

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153. *Id.* ¶¶ 25-28. (Thomas, J., concurring).
154. *Id.* ¶ 26.
155. *Id.* ¶ 27.
156. People v. Staake, 2017 IL 121755.
157. *Id.* ¶¶ 52-54.
158. People v. Relerford, 2017 IL 121094.
159. *Id.* ¶ 71.
160. *Id.* ¶ 1; ILL. SUP. CT. R. 317.

Jurisdiction: Timeliness of filing document initiating appeal. It is fundamental that a notice of appeal from a final judgment must be filed within 30 days from its entry, or 30 days after the entry of the order disposing of the last pending post-judgment motion directed against that judgment or order.[161] This is jurisdictional; if the notice of appeal is even one day late, the reviewing court has no jurisdiction.[162] Rule 303(d) provides a means for seeking to file a late notice of appeal, but the motion must be filed in the reviewing court within 30 days after expiration of the time for filing the notice of appeal, and must be supported by a showing of "reasonable excuse" for failure to file the notice on time.[163] Whether to allow the late notice is discretionary.[164]

Appeals of administrative decisions involve a different procedure. Under the Administrative Review Law,[165] a complaint for judicial review of an administrative agency decision must be filed in the circuit court "within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision."[166] The Administrative Review Law does not have a grace period similar to Rule 303(d).

In *Grimm v. Calica*,[167] Grimm filed her complaint for judicial review of an adverse administrative decision one day late. Under the Illinois Constitution, final administrative decisions are appealable only "as provided by law."[168] The supreme court held a party must strictly comply with the requirements of the review law.[169] Just as in Rules 303 and 606 appeals, failure to do so deprives the court of jurisdiction.[170] Therefore, facially, Ms. Grimm's complaint did not confer jurisdiction on the circuit court.[171]

But, all was not lost. Grimm's attorney persuaded the trial, appellate, and supreme courts that the administrative agency denied Grimm due process because the notice of decision sent to her by agency was constitutionally defective. The administrative review law states the administrative decision is served "when a copy of the decision is personally delivered or when a copy of the decision is deposited in the United States mail, in a sealed envelope or package, with postage prepaid, addressed to the party affected by the decision

161. ILL. SUP. CT. R. 303(a), 606(b).
162. Secura Ins. Co. v. Illinois Farmers Ins. Co., 232 Ill. 2d 209, 217 (2009); Vines v. Village of Flossmoor, 2017 IL App (1st) 163339, ¶¶ 8-9.
163. ILL. SUP. CT. R. 303(d), 606.
164. Mitchell v. Fiat-Allis, Inc., 158 Ill. 2d 143, 148 (1994).
165. 735 ILL. COMP. STAT. § 5/3-101 et seq. (West 2018).
166. 735 ILL. COMP. STAT. § 5/3-103.
167. Grimm v. Calica, 2017 IL 120105.
168. ILL. CONST. 1970, art. VI, § 9.
169. *Grimm*, 2017 IL 120105, ¶ 15.
170. *Id*.; Ultsch v. Ill. Mun. Ret. Fund, 226 Ill. 2d 169, 874 N.E.2d 1, 7 (2007); Rodriguez v. Sheriff's Merit Comm'n, 218 Ill. 2d 342, 843 N.E.2d 379, 383 (2006).
171. *Grimm*, 2017 IL 120105, ¶ 15.

at his or her last known residence or place of business."[172] Therefore, the 35 days began when the letter and decision addressed to Grimm were placed in the mail. But the letter was misleading, said the courts, because the letter stated Grimm had 35 days from the date of "service" but did not state that the service date is the date of mailing.[173]

> Balancing Grimm's constitutionally protected interest, the risk of an erroneous deprivation of that interest, and the value of substitute procedures against the burden on the Department to change boilerplate language in a letter announcing its final decision, we conclude that Grimm did not receive the process to which she was due. Accordingly, Grimm's failure to file her complaint for judicial review within the 35-day period under section 3-103 did not deprive the trial court of jurisdiction.[174]

Justice Thomas dissented. In an opinion longer than the majority's, joined by Chief Justice Karmeier, Justice Thomas found no due process violation.[175] In his view, based on prior precedent, Grimm cannot base a due process claim on ignorance of the law.[176]

While the result in *Grimm* seems equitable, the interesting question is whether this opens the door to future claims of due process violations as a means of avoiding strict jurisdictional filing requirements.

Jurisdiction: Rule 304(a). Carle Foundation v. Cunningham Township is another chapter in the ongoing controversy—are nonprofit hospitals entitled to a charitable exemption from real property taxes?[177] In this case, Carle Foundation filed a declaratory judgment action claiming that four of its hospital properties were exempt from real estate taxation during certain years.[178] The complaint went through four iterations, each one having more than two dozen counts.[179] Count II of the fourth amended complaint claimed its property tax exemptions are governed by section 15-86 of the Property Tax Code.[180]

The circuit court granted plaintiff's motion for summary judgment on count II of the fourth amended complaint; plaintiff's exemption claims were

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172. 735 ILL. COMP. STAT. § 5/3-103 (West 2018).
173. *Grimm*, 2017 IL 120105, ¶ 18.
174. *Id.* ¶ 28.
175. *Id.* ¶ 64. (Thomas, J., dissenting).
176. *Id.* ¶ 52.
177. Carle Found. v. Cunningham Twp., 2017 IL 120427. The basis for the claimed exemption is 35 Ill. Comp. Stat. § 200/15-86. The claim is that this provision is unconstitutional under Ill. Const. 1970, art. IX § 6.
178. *Carle Found.*, 2017 IL 120427, ¶ 1.
179. *Id.* ¶ 8.
180. *Id.*; 35 ILL. COMP. STAT. § 200/15-86 (West 2018).

held valid under the relevant statute.[181] In addition, the circuit court entered a Rule 304(a) finding there was no just reason to delay enforcement of or appeal from its decision.[182]

Defendants appealed. After addressing several issues, including whether it had appellate jurisdiction, the appellate court reversed the circuit court's judgment on the grounds that section 15-86 facially violates article IX, section 6, of the Illinois Constitution.[183]

The supreme court granted both the plaintiff's and the State defendants' petitions for leave to appeal. The court vacated the appellate court's decision on the grounds that it lacked appellate jurisdiction under Rule 304(a).[184]

In a case where there are multiple claims, an appropriate Rule 304(a) finding can make an interlocutory order immediately appealable.[185] The interlocutory order is immediately appealable only if the order constitutes a final judgment as to one or more (but fewer than all) the parties, or one or more "claims."[186] This case, like so many others, brings into focus the meaning of the word "claim."[187]

Under Rule 304(a), the critical distinction is between judgments that dispose of "separate, unrelated claims," and those that dispose only of "separate issues relating to the same claim."[188] Separate, unrelated claims are immediately appealable under Rule 304(a), whereas separate issues relating to the same claim are not.[189] Count II, on which summary judgment was granted, merely sought a declaration as to what law governs counts III through XXXIV.[190] The court stated: "What law governs a claim is not itself a 'claim,' as it resolves nothing other than the standard by which the underlying claim will be adjudicated."[191] Additionally, plaintiff claimed it was entitled to a charitable-use exemption for the tax years in question.[192] The summary judgment on count II did not resolve the charitable-use exemption claim;[193] the order merely resolved an *issue*, one step in leading to disposition of the claim.[194]

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181. *Carle Found.*, 2017 IL 120427, ¶ 10.
182. *Id*.
183. *Id*. ¶ 11.
184. *Id.* at ¶¶ 1, 36.
185. ILL. SUP. CT. R. 304.
186. *Id.*
187. *See Carle Found*., 2017 IL 120427.
188. *E.g. id.*
189. *E.g. id*. ¶ 15.
190. *Id.* ¶ 18.
191. *Id.*
192. *Id.* ¶ 22.
193. *Id.*
194. *Id.* ¶ 23.

In addition, the court noted that count II was not, in fact, a proper declaratory judgment count.[195] Discussion of this issue is beyond the scope of this article, but is recommended reading when considering or seeking a declaratory judgment that does not dispose of the entire case.

In concluding, the court addressed the parties' request to resolve the issue raised in count II under the supreme court's supervisory authority.[196] The present litigation had dragged on for almost ten years, and, they argued, an authoritative resolution as to section 15-86's constitutionality would help move the case toward a final resolution.[197] A ruling on this issue would also give guidance to the Department of Revenue, as well as other courts, in proceedings involving similar exemptions.[198] An interesting point here is the supreme court's acknowledgment it has the power to address the issue; the court's supervisory authority is "unlimited in extent and hampered by no specific rules or means for its exercise."[199]

Notwithstanding solid arguments, the court declined the invitation, for two reasons.[200] First, it would violate the strong policy against piecemeal litigation.[201] Second, the court has a long-standing policy that cases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort.[202] Here, there were issues pending that, depending on their resolution, might moot the question of section 15-86's constitutionality.[203] In fact, there was as yet no determination that plaintiff even qualified for a section 15-86 exemption in the first place.[204]

The court vacated the appellate court's decision in its entirety and remanded the case to the circuit court "for further proceedings."[205]

Carle Foundation is the latest in a long line of decisions concerning a Rule 304(a) finding and when it does or does not confer appellate jurisdiction. History teaches that the bench and bar are often mistaken in resolving that question, just as in this case. Careful analysis before seeking a Rule 304(a) finding may prevent a futile appeal. When in doubt, if the finding is made, the issue can usually be adjudicated by filing a motion to dismiss the appeal as soon as it is docketed in the appellate court, before

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195. *Id.* ¶¶ 25-31.
196. *Id.* ¶¶ 33-34.
197. *Id.* ¶ 33.
198. *Id*.
199. *Id.*
200. *Id.* ¶ 34.
201. *Id.*
202. *Id.*
203. *Id.*
204. *Id.*
205. *Id.* ¶ 35. Another case involving the same issue — the constitutionality of § 15-86 — is now pending in the Illinois Supreme Court. Oswald v. Hamer, 2016 IL App (1st) 152691, *appeal allowed*, 89 N.E.3d 756, Sep. 27, 2017. The First District of the Appellate Court held that § 15-86 is facially constitutional.

incurring the time and expense of needless briefing and argument on the merits.

Petition for leave to appeal. In *City of Chicago v. Alexander*,[206] we are reminded once again that a party filing a petition for leave to appeal to the Illinois Supreme Court must give careful thought to the issue or issues on which review is being sought, and must articulate those issues artfully, separately, and completely in the petition. An issue will usually be deemed forfeited if it is not raised in the petition for leave to appeal.[207]

VI. CONCLUSION

Each year brings new decisions and rule changes of interest to appellate lawyers. However, we rarely experience the current pervasive changes in rules and procedures we are now seeing as Illinois courts transition into the digital age. Welcome to the future!

206. City of Chicago v. Alexander, 2017 IL 120350.
207. *E.g.*, *id.* ¶ 63.