

Using motions is a critical aspect of appellate practice in the U.S. and Illinois courts of appeals.



# Appellate Practice in Motion

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**MOTION PRACTICE IS NOT JUST FOR THE TRIAL COURTS.** Persuasive motions can be filed in the Illinois Appellate Court and the U.S. Court of Appeals for the Seventh Circuit. And these are not motions for an extension of time. Rather, these are motions to dismiss, to strike, to supplement, or to consolidate. Such critical motions can help to frame or outright win your appeal.

## Appellate motions

Persuasive motions in federal and Illinois courts of appeal generally concern: 1) questions of jurisdiction and mootness; 2) what evidence is before the court; and 3) whether the case presents a key question of unresolved state law. Each of these categories deserves attention.



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## ISBA RESOURCES >>

- ISBA Free On-Demand CLE, *Civil Appeal Basics: How To Handle an Appeal in the Illinois Appellate Court From Start To Finish* (recorded Oct. 2025), [law.isba.org/4ru0TiS](http://law.isba.org/4ru0TiS).
- ISBA Free On-Demand CLE, *Civil Practice Basics Series—Part 4: Motion Practice* (recorded June 2024), [law.isba.org/4c3k4ji](http://law.isba.org/4c3k4ji).
- ISBA Free On-Demand CLE, *Family Law “Hot To” Series: Motion for Finding and Reconsider or Appeal* (recorded Feb. 2017), [law.isba.org/4txvxeT](http://law.isba.org/4txvxeT).

## Dismissed or partially dismissed?

The Seventh Circuit takes pride in its “reputation as a jurisdictional hawk.”<sup>1</sup> This reputation makes the Seventh Circuit a receptive forum for dispositive motions, particularly motions based on an absence of jurisdiction.<sup>2</sup> The Illinois Appellate Court also is receptive to dispositive motions, will dismiss appeals for lack of subject-matter jurisdiction,<sup>3</sup> and will also dismiss certain claims from an appeal even when there is no ground for dismissing the entire appeal.<sup>4</sup>

There is no deadline for filing a motion to dismiss for lack of jurisdiction; jurisdictional challenges may be raised at any stage of the appeal, even after oral argument.<sup>5</sup> A motion to dismiss does not, however, extend briefing deadlines; only a motion for extension of time will do that.<sup>6</sup>

An appeal may also be dismissed if the action is moot. An appellate court’s jurisdiction requires that a party have a “personal stake” in the litigation’s outcome.<sup>7</sup> A party lacks a personal stake in a case when the court cannot fashion relief that would have a meaningful impact on that party.<sup>8</sup> If circumstances change so that a party no longer has that personal stake, the court must dismiss the case as moot.<sup>9</sup>

## Introducing new facts

Appeals are not as static as they may seem. Some appeals concern cases where the underlying facts remain in flux. For example, in an insurance coverage case, the insurer may file a declaratory judgment action seeking a declaration that it owes no coverage to its insured. That coverage case may well depend on facts from an underlying lawsuit that is evolving at the same time as an appeal of the coverage

decision. The appellate parties are not strictly limited to the facts before the appellate court.

Generally, U.S. appellate courts will not “consider evidence on appeal that was not before the district court when it rendered its decision” because adding new evidence to the appellate court record would essentially convert an appeal into an impermissible collateral attack on the district court’s decision.<sup>10</sup> But—and this is a notable exception—parties can ask the appeals court to judicially notice new facts, so long as those facts are not subject to reasonable dispute.<sup>11</sup> The content of statutes or prior court documents, geographic boundaries and locations, or the date and time of certain events

1. *Lowrey v. Tilden*, 948 F.3d 759, 760 (7th Cir. 2020).

2. See *United States ex rel. Leonard v. O’Leary*, 788 F.2d 1238, 1240 (7th Cir. 1986) (dismissing an appeal for lack of jurisdiction).

3. See, e.g., *Bauman v. Schneider*, 2018 IL App (4th) 170169, ¶ 5 (dismissing four appeals for lack of subject-matter jurisdiction).

4. *Hampton v. Metropolitan Water Reclamation District of Greater Chicago*, 2025 IL App (1st) 231381, ¶ 43 (granting defendant’s motion to dismiss part of plaintiffs’ claims on appeal).

5. See *Webb v. Clyde L. Choate Mental Health & Development Center*, 230 F.3d 991, 994 (7th Cir. 2000); *Norwest Mortgage, Inc. v. Ozuma*, 302 Ill. App. 3d 674, 677-78 (1st Dist. 1998).

6. *Ramos v. Ashcroft*, 371 F.3d 950 (7th Cir. 2004).

7. *United States v. Shorter*, 27 F.4th 572, 575 (7th Cir. 2022).

8. *Id.* (dismissing an appeal as moot); see also *Waukegan Potawatomi Casino, LLC v. Illinois Gaming Board and City of Waukegan*, 2025 IL 130036, ¶ 20 (finding the court could not grant the plaintiff effectual relief).

9. *Shorter*, 27 F.4th at 575.

10. *Midwest Fence Corp. v. United States Department of Transportation*, 840 F.3d 932, 946 (7th Cir. 2016) (granting a motion to exclude a study that was completed during the pendency of an appeal).

11. *Federated Mutual Insurance Co. v. Coyle Mechanical Supply, Inc.*, 983 F.3d 307, 314 (7th Cir. 2020) (denying a motion to strike exhibits to a reply brief that were not part of the record below); see also *AFSCME, Council 31 v. Illinois Labor Relations Board*, 2017 IL App (5th) 160046, ¶ 2 (granting party’s motion to take judicial notice “of unrelated proceedings involving the same parties”).

## TAKEAWAYS >>

- Motions in federal and Illinois appellate courts can concern jurisdiction, evidence, and unresolved state law and can be used to dismiss, strike, supplement, and consolidate.
- Depending on the motion, various deadlines, word-count limits, and other requirements must be followed. Replies to some appellate motions must be done with a brief.
- Motions in U.S. courts of appeal must conform to Federal Rules of Appellate Procedure 27 and 32(c). Illinois Appellate Court motions must follow requirements set out in Illinois Supreme Court Rule (ISCR) 361; in rare cases, ISCR 316 is used for certification to the Illinois Supreme Court.

are some examples of the type of facts “so universally or generally known as to merit judicial notice.”<sup>12</sup> The proper place to propose judicial notice is in the brief; a request for judicial notice does not need a separate motion.<sup>13</sup>

Parties can also ask the appeals court to consider new deposition testimony (developed during the appeal) for certain limited purposes, such as whether a case would “present specific controverted material factual issues on remand.”<sup>14</sup> Parties can also ask the appeals court to consider new or additional authority.<sup>15</sup> There may be room for citing new evidence and new authorities; it just depends on how you frame your request. Marshalling the appropriate caselaw is critical to this and any request before the courts of appeals.<sup>16</sup>

For every effort to present new evidence, there is the corresponding effort to prevent its introduction. This can take the form of a response to the motion. It also can take the form of a motion to strike in the Illinois Appellate Court.<sup>17</sup> The Seventh Circuit views motions to strike as unnecessary, unauthorized, and pointless, because there is no provision for a judicial blue pencil.<sup>18</sup> Instead, the preferred method for addressing unauthorized content is to address the issue in a brief—“[t]he way to point out errors in an appellee’s brief is to file a reply brief” and the way to point out errors in a reply brief is to request leave to file a supplemental brief.<sup>19</sup>

## Certification

Litigants, or the Seventh Circuit itself, can move to certify a question of state law to the Illinois, Indiana, or Wisconsin supreme courts.<sup>20</sup> The Seventh Circuit typically considers four factors when deciding a question of certification: 1) whether the case concerns a matter of vital public concern; 2) whether the issue will likely recur in other cases; 3) whether resolution of the question to be certified is outcome-determinative of the case; and 4) whether the state supreme court has had the opportunity to develop the particular issue.<sup>21</sup> A motion for

certification must be included in the moving party’s brief, preferably just after the jurisdictional statement. The Seventh Circuit also recommends that the cover page of the brief highlight the desire to certify a question of state law.<sup>22</sup> The Seventh Circuit will wait until the case is fully briefed to answer the certification question (and it may even wait until after oral argument).

The Illinois Appellate Court can also certify a question to the Illinois Supreme Court.<sup>23</sup> Under Illinois Supreme Court Rule (ISCR) 316, the Illinois Appellate Court may certify issues to the Illinois Supreme Court for its review, provided the case “involves a question *of such importance* that the case should be decided by the Supreme Court.”<sup>24</sup> The Appellate Court’s power to compel review by the Supreme Court is a serious one and one that historically the Appellate Court only rarely exercises.<sup>25</sup> A party requests an application for a certificate of importance after the Appellate Court renders its opinion; it does not do so in the initial brief.<sup>26</sup> Specifically, the party requests a Rule 316 certificate of importance within a petition for rehearing or by filing a petition with the clerk of the Appellate Court within 35 days after the entry of the judgment appealed from if no petition for rehearing is filed.<sup>27</sup>

## Other motions

A motion to dismiss the appeal (as moot or for lack of jurisdiction) can fast-track the appeal by obviating the need for full briefing and oral argument. When a motion to dismiss is not available, there is another, more mundane way to fast-track the appeal: a motion to expedite. Motions to expedite are often seen in the family law context<sup>28</sup> but they can also be brought when the deliberate speed of the appellate process threatens the movant’s interests, like when a party has been denied leave to intervene in the trial court and must watch the district court case proceed from the sidelines while appealing the intervention ruling.<sup>29</sup>

An emergency motion can also get your appeal moving. Any emergency motion must be captioned as an

emergency motion, specify the nature of the emergency and the grounds for the requested relief, and specify in the first paragraph the date by which the court must act on the motion.<sup>30</sup> An emergency motion cannot be filed until the appeal has been docketed. Appellate courts give emergency motions a critical look and will specifically inquire whether the moving party has “brought the emergency on himself.”<sup>31</sup>

## Filing an appellate motion

Motions in the Seventh Circuit must conform with Federal Rules of Appellate Procedure 27 and 32(c). Under Rule 27, motions must be filed and served on all parties; motions cannot take the form of a letter to the clerk or to a judge. The motion should be a single document,

12. *Holt v. Massage Envy Franchising, LLC*, 2017 U.S. Dist. LEXIS 90148, at \*8 (S.D. Ill. June 9, 2017); see also *People v. Clark*, 406 Ill. App. 3d 622, 633 (2d Dist. 2010) (information acquired from mainstream internet sites such as MapQuest and Google Maps is reliable enough to support a request for judicial notice).

13. *In re Lisse*, 905 F.3d 495 (7th Cir. 2018) (Easterbrook, J., in chambers).

14. *Coyle Mechanical Supply*, 983 F.3d at 314-15.

15. *Koneuko v. Advocate Health & Hospitals Corp.*, 2020 IL App (2d) 190684, ¶ 86 n.2 (granting appellant’s motion to cite additional authority, even when the motion came after oral argument).

16. *O’Gorman v. Paschen*, 2015 IL App (1st) 133472, ¶ 90; Ill. S. Ct. R. 341(h)(7).

17. *Kilpatrick v. Baxter Healthcare Corp.*, 2023 IL App (2d) 230088, ¶ 12 (granting motion to strike portions of a reply brief that referenced facts not contained in the record).

18. *Custom Vehicles, Inc. v. Forest River, Inc.*, 464 F.3d 725, 726-27 (7th Cir. 2006) (Easterbrook, J., in chambers).

19. *Id.*

20. 7th Cir. R. 52(a).

21. *State Farm Mutual Automobile Insurance Co. v. Pate*, 275 F.3d 666, 672 (7th Cir. 2001).

22. 7th Cir. Practitioner’s Handbook for Appeals, XXV (2020 Edition).

23. Ill. Const. 1970, art. VI, § 4(c); 705 ILCS 25/8.2; Ill. S. Ct. R. 316.

24. *Johnson v. Ames*, 2016 IL 121563, ¶¶ 26-27 (Thomas, J., concurring).

25. *Id.*; see also *Watson v. J.C. Penney Co.*, 237 Ill. App. 3d 976, 980 (4th Dist. 1992) (“[W]e believe that appellate courts should use Rule 316 very sparingly.”).

26. *Huskins v. Tapley*, 2019 IL App (4th) 190292-U, ¶ 54.

27. *Id.*

28. Ill. S. Ct. R. 311.

29. See *Drifless Area Land Conservancy v. Huebsch*, 969 F.3d 742, 746 (7th Cir. 2020) (granting a motion for expedited review without oral argument).

30. Ill. App. Ct., First Dist., R. 4(j); see also 7th Cir. Practitioner’s Handbook for Appeals, IX (2020 Edition) (noting that emergency motions should highlight the relevant dates or time periods implicated by the motion).

31. *Morgan v. White*, 964 F.3d 649, 651 (7th Cir. 2020).

with all legal arguments presented in the body of the motion, rather than a separate memorandum of law.<sup>32</sup> Any supporting affidavit should be limited to factual information and devoid of legal argument.<sup>33</sup> The motion is limited to 5,200 words and the reply is limited to 2,600 words.<sup>34</sup> But given the volume of motions before the Seventh Circuit, “brevity is extremely important.”<sup>35</sup> A response to a motion is due within 10 days of service of the motion, and any reply is due within seven days of service of the response.<sup>36</sup> Do not expect oral argument on your motion; nearly all motions are decided without oral argument.<sup>37</sup>

Motions in the Illinois Appellate Court are governed by ISCR 361. Under the Rule, motions must be in writing, state the relief being sought, and explain the grounds for the requested relief.<sup>38</sup> The motion can stand on its own or be accompanied by a supporting memorandum.<sup>39</sup> Notably, Rule 361 does not impose any word limit on motions. The Illinois Appellate Court requires that you submit a proposed order with any motion, which must include the case caption, a brief statement identifying the motion and giving the court the choice to grant or deny it (“Allowed” or “Denied”), and signature and date lines for the judge to complete.<sup>40</sup> The Illinois Appellate Court also has noted a “significant problem” with parties failing to file proof of service. Any motion that does not include proof of

service risks being stricken.<sup>41</sup> A response to a motion must be in writing and must be filed within seven days after personal or electronic service.<sup>42</sup>

### Who decides motions?

In the Seventh Circuit, motions are received and reviewed by staff attorneys who then present the motion to either the motions judge or, if necessary, a motions panel of three judges.<sup>43</sup> The judge or panel will then advise the staff attorneys as to the decision and direct that an order be prepared for their review.<sup>44</sup> Most of the time, the sitting motion judge has no connection to the task of resolving the appeal on the merits, which means a given motion requires four judges (rather than three) to review the record and understand the issues.<sup>45</sup> An order that concerns a motion that will dismiss or otherwise determine the merits of an appeal goes to a motions panel because those motions require the agreement of at least two judges.<sup>46</sup> Finally, some motions may be deferred and taken with the case to be decided with the appeal itself.

The Illinois Appellate Court has similar procedures for deciding motions. Motions that will decide the appeal are heard by a three-judge panel. However, the “denial of a motion to dismiss an appeal is not final,” and the panel that hears the appeal can reevaluate the denial because the panel has an independent duty to determine whether it has jurisdiction.<sup>47</sup> Motions that are not dispositive of the

appeal are assigned to a single presiding or designated judge. As in the Seventh Circuit, some motions may be deferred and taken with the case.

### Conclusion

Appellate motions are not limited to extensions of time. Instead, parties have an array of motions at their disposal with the ability to dismiss an appeal, include or exclude evidence or authorities, request expedited review, request certification, or seek any other appropriate relief.

In short, motion practice is a critical part of appellate advocacy before the Seventh Circuit and the Illinois Appellate Court. **IBJ**

32. Fed. R. App. P. 27(a)(2)(C).

33. Fed. R. App. P. 27(a)(2)(B).

34. Fed. R. App. P. 27(d) (2).

35. 7th Cir. Practitioner’s Handbook for Appeals, IX (2020 Edition).

36. Fed. R. App. P. 27(a)(3), (4).

37. *Id.*

38. Ill. S. Ct. R. 361(a).

39. *Id.*

40. Ill. S. Ct. R. 361(b).

41. See Ill. App. Ct., Fifth Dist., R. 103(a).

42. Ill. S. Ct. R. 361(b)(3). The Rule does not make any mention of a reply.

43. See Seventh Circuit Operating Procedures 1 (2015), [law.isba.org/4k04Yuj](http://law.isba.org/4k04Yuj).

44. *Id.*; see also *Custom Vehicles*, 464 F.3d at 726 (Easterbrook, J., in chambers) (describing an “absurd motion” that came to him during his stint as the motions judge).

45. *Custom Vehicles*, 464 F.3d at 726.

46. 7th Cir. Practitioner’s Handbook for Appeals, IX (2020 Edition).

47. *Wilmington Savings Fund Society v. Herzog*, 2024 IL App (1st) 221467, ¶ 35.