

Rule 43. Certification by the Court of Appeals to the Supreme Court.

(a) **Transfer.** In any case over which the Court of Appeals has original appellate jurisdiction, the court may, upon the affirmative vote of four judges of the court, certify a case for immediate transfer to the Supreme Court for determination.

(b) **Procedure for transfer.**

(1) The Court of Appeals may, on its own motion, decide whether a case should be certified. Any party to a case may, however, file and serve an original and eight copies of a suggestion for certification not exceeding five pages setting forth the reasons why the party believes that the case should be certified. The suggestion may not be filed prior to the filing of a docketing statement. Within ten days of service, an adverse party may file and serve an original and eight copies of a statement not in excess of five pages either supporting or opposing the suggestion for certification.

(2) Upon entry of the order of certification, the Clerk of the Court of Appeals shall immediately transfer the case, including the record and file of the case from the trial court, all papers filed in the Court of Appeals, and a written statement of all docket entries in the case up to and including the certification order, to the Clerk of the Supreme Court. The Clerk of the Court of Appeals shall promptly notify all parties and the clerk of the trial court that the case has been transferred.

(3) Upon receipt of the order of certification, the Clerk of the Supreme Court shall enter the appeal upon the docket of the Supreme Court. The clerk of the Supreme Court shall immediately send notices to all parties and to the clerk of the trial court that the case has been docketed and that all further filings will be made with the Clerk of the Supreme Court. The notice shall state the docket number assigned to the case in the Supreme Court. The case shall proceed before the Supreme Court to final decision and disposition as in other appellate cases pursuant to these rules.

(4) If the record on appeal has not been filed with the Clerk of the Court of Appeals as of the date of the order of transfer, the Clerk of the Court of Appeals shall notify the clerk of the trial court that upon completion of the conditions for filing the record by that court, the clerk shall transmit the record on appeal to the Clerk of the Supreme Court. If,

however, the record on appeal has already been transmitted to and filed with the Clerk of the Court of Appeals as of the date of the entry of the order of transfer, the Clerk of the Court of Appeals shall transmit the record on appeal to the Clerk of the Supreme Court within five days of the date of the entry of the order of transfer.

(c) **Criteria for transfer.** The Court of Appeals shall consider certification only in the following cases:

(1) Cases which are of such a nature that it is apparent that the case should be decided by the Supreme Court and that the Supreme Court would probably grant a petition for a writ of certiorari in the case if decided by the Court of Appeals, irrespective of how the Court of Appeals might rule, and

(2) Cases which will govern a number of other cases involving the same legal issue or issues pending in the district courts, juvenile courts or the Court of Appeals or which are cases of first impression under state or federal law which will have wide applicability.

Advisory Committee Note

~~Former Rules 4A and 4B have been renumbered as Rules 42 and 43 respectively and included in a new title governing the certification and transfer of cases between courts. The amendments make uniform the practices followed by the two appellate courts in transferring cases.~~